

# 12-2297pr

*To be argued by:*  
D. B. KARRON

---

United States Court of Appeals  
FOR THE SECOND CIRCUIT  
Docket No. 12-2297



DANIEL B. KARRON,

*Petitioner - Appellant,*

—v.—

UNITED STATES OF AMERICA,

*Respondent - Appellee.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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**APPENDIX Volume 2 FOR THE PETITIONER - APPELLANT**

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D. B. KARRON  
*pro se*  
348 East Fulton Street  
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(516) 515- 1474  
drdbkarron@gmail.com

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NOTE: Page Numbers are not correct and need to be hand entered because of hand insertion of PDF. Contents for ordering, not for reference. Citations into page numbers are being checked.

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11/19/2004 21:37:59

Exhibit G: Goldberg Declaration

Goldberg Declaration

Exhibit G: Goldberg Declaration

P. 1

KA-302

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KA-302

Page 1 of 2

## AFFIDAVIT

STATE OF NJCOUNTY OF Mercer

I, Lee Goldberg, being duly sworn, hereby make the following affidavit to KIRK M. YAMATANI, who has identified himself to me as a Special Agent with the U.S. Department of Commerce, Office of Inspector General, Office of Investigations.

I lent Dan Karron money as a normal matter of course as a part of a 30+ year friendship. The most recent occasions were \$10,000 in 1996 and \$10,000 in 1999. Dr. Karron made diligent efforts to repay both loans, with the first one being paid off sometime before 1999 and he had made a significant dent in the second loan. ~~I think the payments started~~ the payments were sporadic ~~the above stated~~ Ly as Dr. Karron had the cash to make payments. This was a loan I made to Dr. Karron to help his business going ~~strong~~ Ly

I'd like to add that ~~that~~ in my 30+ years of knowing Dan, he has been one of the most honest people I know and that any misappropriation of government funds is, in my judgement, a matter of inexperience or lack of business expertise rather than deliberate deception or malice. Affiant's Initials Ly

Ex Libris Dr. Karron

11/19/2004 21:38:07

Exhibit G: Goldberg Declaration Goldberg Declaration Exhibit G: Goldberg Declaration 2

KA-303

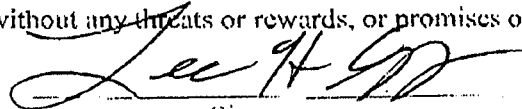
KA-303

KA-303

Page 2 of 2

I have read the foregoing affidavit consisting of 2 pages. I fully understand this affidavit and it is true, correct, and complete to the best of my knowledge and belief. I have initialed all the corrections and placed my initials at the bottom of each foregoing page.

I have made this affidavit freely and voluntarily, without any threats or rewards, or promises of reward having been made to me in return for it.

  
Signature

Subscribed and sworn to before me this 25<sup>th</sup> day of October 2004 at

Princeton, New Jersey

Kirk M. Yamatani  
Special Agent

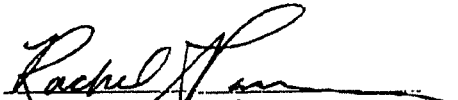
  
Rachel Garrison  
Special AgentAffiant's Initials LG

Exhibit G: Goldberg Declaration

Goldberg Declaration

Exhibit G: Goldberg Declaration

KA-304

KA-304

KA-304

[Page 1 of 2]

AFFIDAVIT

STATE OF NJ

COUNTY OF MERCER

I, Lee Goldberg, being duly sworn, hereby make the following affidavit to KIRT M. YAMATAMI, who has identified himself to me as a Special Agent with the U. S. Department of Commerce, Office of Inspector General, Office of Investigations.

I lent[sic] Dan Karron money as a normal matter of course as a part of a 30+ year friendship. The most recent occasions were \$10,000 in 1996 and \$10,000 in 1999. Dr. Karron made diligent efforts to repay both loans, with the first one being paid off sometime before 1999 and had made a significant dent in the second loan. [LG]The payments were sporadic as Dr. Karron had the cash to make payments. This was a loan I made to Dr. Karron to help his business going. [LG].

I'd like to add that in my 30+ years of knowing Dan, he has been one of the most honest people I know and that any misappropriation of government funds is, in my judgment, a matter of inexperience of lack of business expertise, rather than deliberate deception of malice.

[Page 2 of 2]

I have read the foregoing affidavit consisting of 2 pages. I fully understand this affidavit and it is true, correct, and complete to the best of my knowledge and belief. I have initialized all corrections and placed my initials at the bottom of each foregoing page.

I have made this affidavit freely and voluntarily, without any threats or rewards, or promises of reward having been made to me in return for it.

<handwritten signature>

Lee H. Goldberg

Signature.

Subscribe and sworn to before me this 25<sup>th</sup> day of October, 2004 at Princeton, New Jersey

<blank signature line>

Kirt M. Yamatani

Exhibit G: Goldberg Declaration

Goldberg Declaration

Exhibit G: Goldberg Declaration

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**KA-305**

**KA-305**

Special Agent

<handwritten signature>

Rachel Garrison

Special Agent

Exhibit G: Goldberg Declaration

Goldberg Declaration

Exhibit G: Goldberg Declaration

**KA-306**

**KA-306**

**KA-306**

# EXHIBIT

# 2



Exhibit G: Goldberg Declaration

Goldberg Declaration

Exhibit G: Goldberg Declaration

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KA-307

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

- - - - - x

DANIEL B. KARRON,

:

DECLARATION

Petitioner,

:

11 Civ. 1874 (RPP)  
07 Cr. 541 (RPP)

- v. -

:

UNITED STATES OF AMERICA,

:

Respondent.

:

- - - - - x

STATE OF NEW YORK

)

COUNTY OF NEW YORK

)

ss.:

SOUTHERN DISTRICT OF NEW YORK

)

RACHEL ONDRIK, pursuant to Title 28, United States Code, Section 1746, hereby declares under penalty of perjury:

1. I am a Special Agent with U.S. Department of Commerce, Office of the Inspector General ("DOC-OIG"). I have been employed by DOC-OIG for approximately ten years.

2. I was one of the lead case agents for the case of United States v. Daniel B. Karron, 07 Cr. 541 (RPP). As such, I was personally involved in the investigation of this case.

3. As part of my responsibilities as one of the lead case agents, I reviewed documents relevant to this case, including all of the files maintained by the National Institute for Science and Technology ("NIST") pertaining to the Advanced Technology Program ("ATP") grant awarded to Dr. Karron's company, Computer Aided Surgery, Inc. ("CASI"), in October 2001. During the course of the investigation, I thoroughly reviewed all of the

documents pertaining to CASI's ATP grant, including the files maintained by Hope Snowden, the grant specialist who handled budget and finance issues related to the grant, and the files maintained by Bettijoyce Lide and Jayne Orthwein, who handled the technical aspect of the grant, and did not find any exculpatory evidence.

4. Also as part of the investigation, I contacted a number of potential witnesses and conducted several witness interviews. Among the individuals that I interviewed were Marc Stanley, Jayne Orthwein, Chaya Levin, Peter Ross, and James Cox. I did not speak to or interview Amiee Karron, Nathaniel Karron, Jill Feldman, or Margaret Ferrand. None of the witnesses that were interviewed, including Mr. Stanley, Ms. Orthwein, Ms. Levin, Mr. Ross, and Mr. Cox, provided any exculpatory evidence.

5. At no time during any of the interviews or phone calls that I conducted, including the interviews of Mr. Stanley, Ms. Orthwein, Ms. Levin, Mr. Ross, and Mr. Cox, did I or any of the other DOC-OIG agents attempt to coerce, threaten, frighten, or intimidate the witnesses, nor did I or any of the other agents attempt to persuade them not to testify at trial.

6. In addition to conducting the investigation of this case, I also assisted with the preparation for trial. In or about May 2008, a few weeks before the trial began in June 2008, I sent the entire original grant file for the CASI ATP grant to

Exhibit G: Goldberg Declaration

Goldberg Declaration

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prosecutors in New York so that it could be available for trial.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
July 15, 2011



RACHEL ONDRIK  
Special Agent  
U.S. Department of Commerce  
Office of the Inspector General

**KA-310**

**KA-310**

**KA-310**

# EXHIBIT

# 3

Exhibit G: Goldberg Declaration

Goldberg Declaration

Exhibit G: Goldberg Declaration

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**From:** [Lee Goldberg](#)  
**To:** [karron@casi.net](mailto:karron@casi.net)  
**Subject:** RE: new CASI trucking company logo  
**Date:** Thursday, November 18, 2004 12:15:00 AM

---

The question about any possible romantic involvement came from one of the two men (the non-Asian one) who accompanied Ms. Garrison. They specifically asked me if I'd had any romantic involvement with you (almost verbatim). And while I do not recall the exact words, they specifically implied that they could have been with you in either of your two genders. I said no, and asked why they wanted to know and they said that my loaning you these large sums of money with such loose conditions caused them to wonder how deep our relationship went. I don't recall the specific language, but will try to reconstruct what I can.

LEE

-----Original Message-----

**From:** dr d b karron [mailto:karron@casi.net]  
**Sent:** Wednesday, November 17, 2004 11:37 PM  
**To:** lgoldberg@green-electronics.com  
**Subject:** RE: new CASI trucking company logo

We need the exact words of the questions asked, specifically, was there sexual innuendo by Ms. G? Who made these remarks ? Ms. G?

-----Original Message-----

**From:** Lee Goldberg [mailto:lgoldberg@green-electronics.com]  
**Sent:** Tuesday, November 16, 2004 9:14 AM  
**To:** karron@casi.net  
**Subject:** RE: new CASI trucking company logo

Very cute!

And BTW, call me when you can - I'm around till 10:30.

LEE

-----Original Message-----

**From:** dr d b karron [mailto:karron@casi.net]  
**Sent:** Sunday, November 14, 2004 3:43 PM  
**To:** karron@casi.net  
**Subject:** new CASI trucking company logo

here is our new logo for our vehicles...

Exhibit G: Goldberg Declaration

Goldberg Declaration

Exhibit G: Goldberg Declaration

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**KA-312**

**KA-312**

# EXHIBIT

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Exhibit G: Goldberg Declaration

Goldberg Declaration

Exhibit G: Goldberg Declaration

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KA-313

From: Lee Goldberg [mailto:[lgoldberg@green-electronics.com](mailto:lgoldberg@green-electronics.com)]  
Sent: Tuesday, November 16, 2004 10:32 AM  
To: [rgarrison@oig.doc.gov](mailto:rgarrison@oig.doc.gov)  
Cc: Lee H. Goldberg  
Subject: follow-up on this morning's call

Hi Ms. Garrison,

Thanks for taking my call this morning and agreeing to send me copies of the records I submitted to you when you came to interview me a couple of weeks ago. I just have a couple of things I'd like to ask when you make those copies. First, I'd ask that you please be sure to include copies of all the documents I gave you when you. Second, please include a copy of the statement that I made and signed that day so I can have it for my records.

Thanks,

LEE

Lee H. Goldberg - Sr. Editor  
analogZONE - [www.analogzone.com](http://www.analogzone.com)  
202 Mather Ave.  
Princeton, NJ 08540  
[+01 \(609\) 720-0014](tel:+16097200014) - Office  
[+01 \(609\) 575-7669](tel:+16095757669) - Mobile  
[lgoldberg@green-electronics.com](mailto:lgoldberg@green-electronics.com)

---

Incoming mail is certified Virus Free.  
Checked by AVG anti-virus system (<http://www.grisoft.com>).  
Version: 6.0.786 / Virus Database: 532 - Release Date: 10/29/2004

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Goldberg Declaration

Exhibit G: Goldberg Declaration

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# EXHIBIT

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Exhibit G: Goldberg Declaration

Goldberg Declaration

Exhibit G: Goldberg Declaration

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86A7KAR1

1 (Jury present)

2 THE COURT: All right. Please be seated.

3 Mr. Rubinstein?

4 MR. RUBINSTEIN: We're ready to proceed, your Honor.

5 Thank you. We call our next witness.

6 LEE H. GOLDBERG,

7 called as a witness by the defendant,

8 having been duly sworn, testified as follows:

9 DEPUTY COURT CLERK: Please state your name for the  
10 record and spell your last name slowly.

11 THE WITNESS: Lee H. Goldberg.

12 DIRECT EXAMINATION

13 BY MR. RUBINSTEIN:

14 Q. Good morning, Mr. Goldberg.

15 A. Good morning.

16 THE COURT: G-O-L-D-B-E-R-G?

17 THE WITNESS: Yes, sir.

18 THE COURT: All right.

19 Q. Where do you reside, sir?

20 A. I live in Princeton, New Jersey. Do you need an address?

21 2002 Mayfair Avenue.

22 Q. How long have you resided there?

23 A. A little over ten years.

24 Q. Is that where you came from this morning?

25 A. Yes, sir, and that's why I'm late. I apologize to the

SOUTHERN DISTRICT REPORTERS, P.C.

(212) 805-0300

Exhibit G: Goldberg Declaration

Goldberg Declaration

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86A7KAR1

Goldberg - direct

1 court. The trains, I don't want to talk about it.

2 Q. Now, what is your business or occupation, sir?

3 A. I'm a recovering engineer. I used to be an aerospace  
4 engineer. Now I'm a journalist.

5 Q. How long have you been a journalist?

6 A. About 14 years.

7 Q. Is there a particular area that you --

8 A. I cover high technology. Technology and the environment  
9 are my two specialties, mostly networking communications.

10 Q. Do you know the defendant Daniel Karron?

11 A. Yes.

12 Q. Do you see the defendant in court?

13 A. Yeah. Right there.

14 THE COURT: The witness has identified the defendant.

15 Q. And how long do you know the defendant?

16 A. I'm trying to think of how many years. I guess since I was  
17 13 or 14. We went to junior high together.

18 Q. And have you maintained a relationship with the defendant?

19 A. We were in close contact for a long time. Then I fell off  
20 the face of the planet. I was doing some research. We weren't  
21 in touch for a couple of years. Danny tracked me down probably  
22 in 1979 and 1980, and we have been in contact ever since.

23 Q. And do you know a company called CASI?

24 A. Yes, sir.

25 Q. And have you had any involvement with CASI?

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Exhibit G: Goldberg Declaration

Goldberg Declaration

Exhibit G: Goldberg Declaration

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Goldberg - direct

1 A. I was nominally at least on the board of directors, and I  
2 did some initial funding.

3 Q. Did you ever go to a board meeting?

4 A. No, sir.

5 Q. Over the time that you have known Dr. Karron, have you been  
6 able to form an opinion as to his truthfulness and honesty?

7 A. Yes, sir.

8 Q. What is your opinion, sir?

9 A. He is one of the people I trust in this world.

10 MR. RUBINSTEIN: Thank you very much.

11 THE COURT: Cross-examination.

12 MR. EVERDELL: Yes, your Honor.

13 CROSS EXAMINATION

14 BY MR. EVERDELL:

15 Q. Good morning, Mr. Goldberg.

16 A. Good morning.

17 Q. You said that you were on the board of directors nominally  
18 for CASI?

19 A. Yeah.

20 Q. So you didn't attend any board meetings.

21 A. No.

22 Q. And you never were a part of the day-to-day workings of  
23 CASI, were you?

24 A. No. I reviewed some documents, you know, when he was  
25 making proposals, I would go over those things. I spent some

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86A7KAR1

Goldberg - cross

1 time giving advice for whatever it was worth, you know, but a  
2 lot of times when it was a technical paper I would take a look  
3 at it to make sure that it was at least in some sort of order  
4 or in English, comprehensible.

5 Q. So on the technical side of things, reviewing documents, is  
6 that what you said?

7 A. Basically it.

8 Q. So you didn't have any involvement with the finances of  
9 CASI?

10 A. No, sir.

11 Q. You have no idea how they spent their money?

12 A. Not particularly.

13 Q. And you don't know anything about the rules of the ATP  
14 grants in particular, do you?

15 A. Not -- I'm certainly not well versed in it.

16 Q. And you didn't actually work in the CASI work space in 2001  
17 to 2003, did you?

18 A. I spent time there, but mostly, you know, mostly as a  
19 friend and whatever, but I wasn't -- I was in the work space a  
20 fair amount. I was in there for various reasons that I would  
21 be there.

22 Q. Now, Mr. Goldberg, you own stock in CASI, don't you?

23 A. I believe that there is a piece of paper in my files that  
24 says something to that effect.

25 Q. You own stock?

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Exhibit G: Goldberg Declaration

Goldberg Declaration

Exhibit G: Goldberg Declaration

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86A7KAR1

Goldberg - cross

1 A. I guess so. I haven't looked at it in I don't know how  
2 many years. It was given to me. I never asked.

3 Q. Right. You said also that you have known the defendant  
4 since you were 13 or 14, right?

5 A. Yes, sir.

6 Q. So, he is a junior high buddy of yours, right?

7 A. Yeah. And?

8 Q. And you wouldn't want anything bad to happen to your  
9 friend, right?

10 A. No. And your point is?

11 Q. Simply that. No further questions.

12 THE COURT: Any redirect?

13 MR. RUBINSTEIN: No, your Honor.

14 THE COURT: All right. You are excused. Next  
15 witness.

16 (Witness excused)

17 (Continued on next page)

18

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(212) 805-0300

KA-320

KA-320

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(.4) EXHIBIT O ORTHWEIN

# EXHIBIT

# O

Agenda for Kickoff Meeting

KA-321

KA-321

KA-321

**Subject:** Agenda for Kickoff Meeting

**Date:** Mon, 22 Oct 2001 11:43:18 -0400

**From:** Jayne Orthwein <jayne.orthwein@nist.gov>

**To:** egurfein@earthlink.net

**CC:** bjlide@nist.gov, hope Snowden <hope.snowden@nist.gov>

Lee, here is a tentative agenda for our planned kickoff meeting. Please get back to me when you, Dr. Karron and Dr. Satava coordinate a potential date for the meeting.

Thanks for your time and attention to this matter.

Jayne Orthwein

ATP

301-975-3176

#### CASI's Presentation

Project Overview

Updates

Changes

#### Getting Started

General ATP information

Understanding ATP's perspective

#### Establishing Expectations

Project Management and Planning

Managing Change

Reporting Requirements

IPR, Human & Animal Subjects, Change in Name or Ownership

Grant Administration Requirements

11/8/01

**NIST**

**VISITOR**

D. KARRON

KA-322

KA-322

KA-322

November 5<sup>th</sup> Agenda for CASI - ATP meeting

Project Overview:

Re-Organization of CASI

First Quarter Goals

MMVR Meeting in January 2002 as first quarter report

Extension on First Quarterly report due Jan 1 to MMVR Meeting, report will be paper published at meeting.

Budget Changes retroactive to Oct 1.

Increase Travel budget for first year. Increase by +16,000 to 20,000

Make supplies budget (omitted in first budget).

Thorn : 100.00 month

Webworqs.com : 400.00 month

Include Internet costs,

DSL / Dedicated dial up for

Gurfein,

Idan,

Planetary CASI HQ

Increase 0 to 12K/year.

First Year subcontractor:

Move George

Amiee Idan title: Assistant Project Fiscal Manager

Move subcontract with NYU to second year.

Move CUNY Contract start in 3<sup>rd</sup> Quarter.

Approval for Bruce Ellerin as consultant/contractor.

Approval for George Wolberg as consultant/contractor.



A u d i t   a n d   A c c o u n t i n g

AUDIT  
and  
ACCOUNTING  
FORENSICS  
(short)

G X 1 1 4

AUDIT  
and  
ACCOUNTING  
FORENSICS  
Government  
Exhibit  
GX114

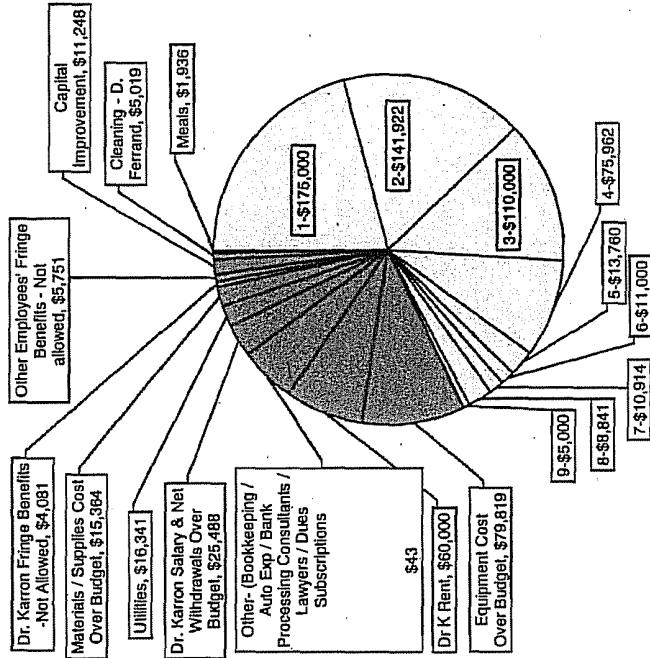
A-233

KA-325

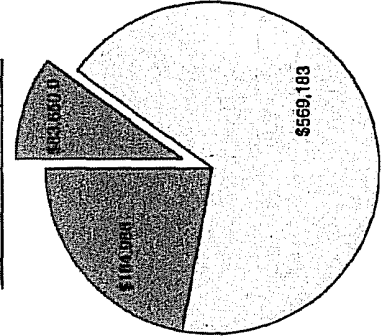
KA-325

KA-325

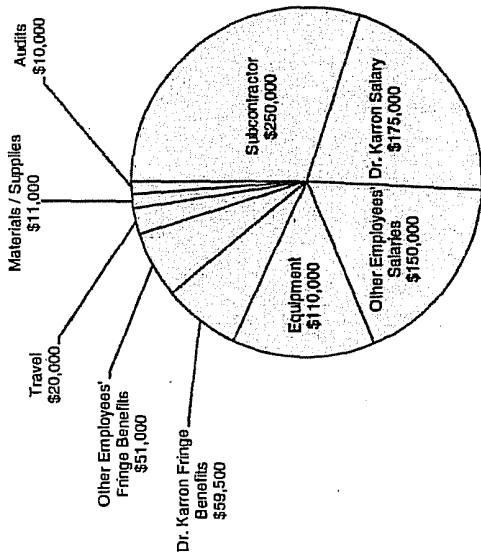
Actual Cost for Year 1  
(10/1/2001 - 10/10/2002)



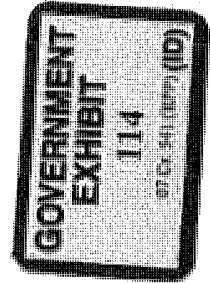
10% Adjustment  
TOTAL RED \$268,638.



Budget for Year 1  
(10/1/2001 to 9/30/2002)



	10/1/2001 - 10/10/2002	%
Budget	CASI Spent	Difference
Subcontractor	\$250,000	\$75,982 (174,030) -69.62%
Dr. Karron Salary	\$200,488	\$25,488 (8,078) 14.56%
Other Employees' Salaries	\$150,000	\$141,922 (8,078) -5.39%
Equipment	\$110,000	\$189,819 (79,819) 72.56%
Dr. Karron Fringe Benefits	\$59,500	\$19,183 (40,337) -67.79%
Other Employees' Fringe Benefits	\$51,000	\$20,222 (30,778) -60.35%
Travel	\$20,000	\$10,914 (9,086) -45.43%
Materials / Supplies	\$11,000	\$26,364 (15,364) 139.65%
Audits	\$10,000	\$5,000 (5,000) -50.00%
Dr K Rent	\$0	\$60,000 60,000%
Other- (Bookkeeping / Auto Exp / Bank Processing Consultants / Lawyers / Dues Subscriptions)	\$0	\$43,592 43,592%
Utilities	\$0	\$16,341 16,341%
Dr. Karron Fringe Benefits - Not Allowed	\$0	\$4,081 4,081%
Other Employees' Fringe Benefits - Not allowed	\$0	\$5,751 5,751%
Capital Improvement	\$0	\$11,248 11,248%
Cleaning - D. Ferrand	\$0	\$5,019 5,019%
Meals	\$0	\$1,936 1,936%
Total Direct Costs	\$836,500	\$837,822



G X 1 1 4 in F o c u s

AUDIT  
and  
ACCOUNTING FORENSICS  
Government Exhibit  
  
GX114  
  
TABLE IN  
  
FOCUS

KA-327

## A-32/GX14 analysis table focus

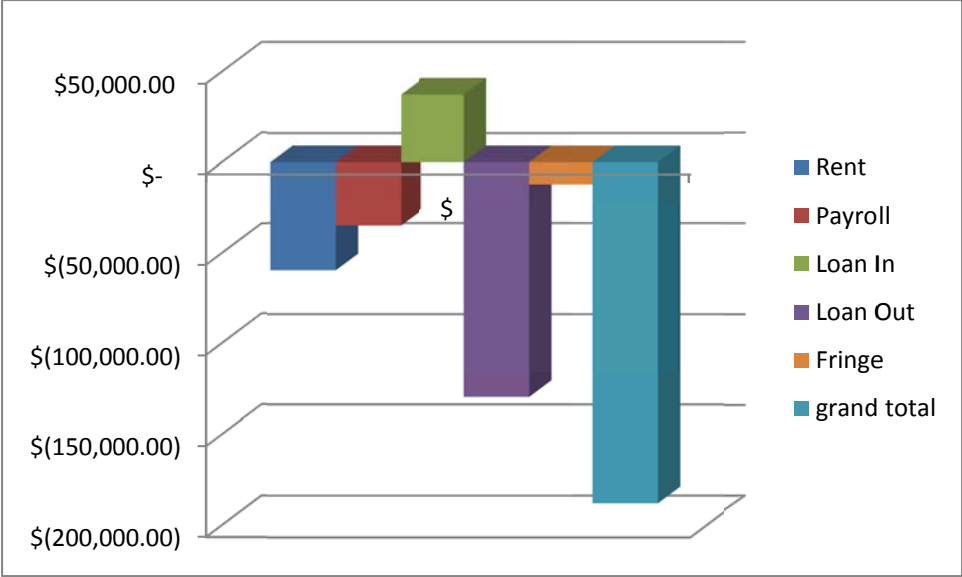
Amendment # 2 - 1/4/02

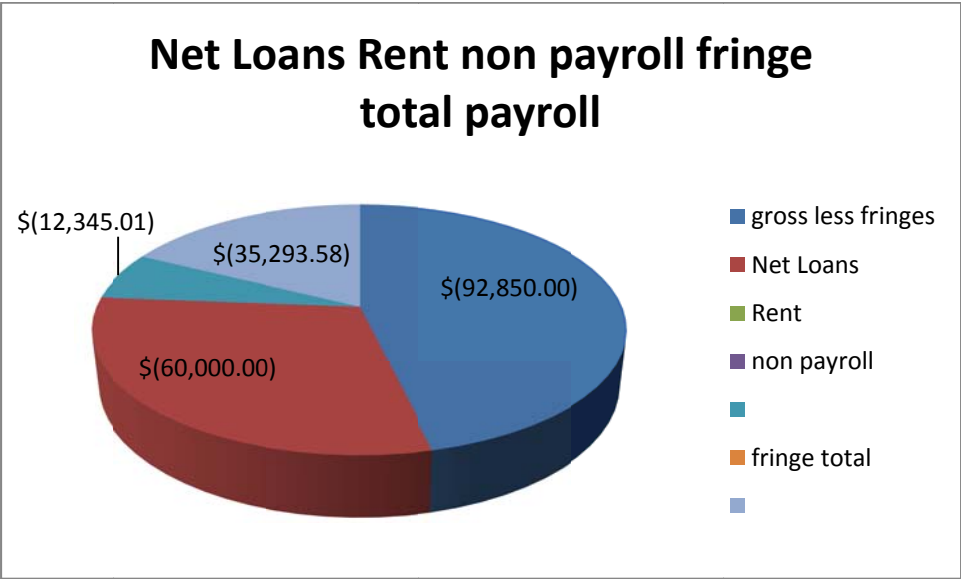
**KA-327**

10/1/2001 - 10/10/2002

# KA-327

	Budget	CASI Spent	Difference
Subcontractor	\$ 250,000.00	\$ 75,962.00	(\$174,038.00)
Dr. Karron Salary	\$ 175,000.00	\$ 200,488.00	\$25,488.00
Other Employees' Salaries	\$ 150,000.00	\$ 141,922.00	(\$8,078.00)
Equipment	\$ 110,000.00	\$ 189,819.00	\$79,819.00
Dr. Karron Fringe Benefits	\$ 59,500.00	\$ 19,163.00	(\$40,337.00)
Other Employees' Fringe			
Benefits	\$ 51,000.00	\$ 20,222.00	(\$30,778.00)
Travel	\$ 20,000.00	\$ 10,914.00	(\$9,086.00)
Materials / Supplies	\$ 11,000.00	\$ 26,364.00	\$15,364.00
Audits	\$ 10,000.00	\$ 5,000.00	(\$5,000.00)
Dr K Rent	\$ -	\$ 60,000.00	\$60,000.00
Other- (Bookkeeping / Auto			
Exp / Bank Processing			
Consultants / Lawyers / Dues			
Subscriptions	\$ -	\$ 43,592.00	\$43,592.00
utilities	\$ -	\$ 16,341.00	\$16,341.00
Dr. Karron Fringe Benefits -			
not Allowed	\$ -	\$ 4,081.00	\$4,081.00
Other Employees' Fringe			
Benefits - Not allowed	\$ -	\$ 5,751.00	\$5,751.00
Capital Improvement	\$ -	\$ 11,248.00	\$11,248.00
cleaning - D. Ferrand	\$ -	\$ 5,019.00	\$5,019.00
Meals	\$ -	\$ 1,936.00	\$1,936.00
Total Direct Costs	\$ 836,500.00	\$ 837,822.00	
COLUMN CHECKSUM	\$ 836,500.00	\$ 837,822.00	
Discrepancy: overspent		\$ 1,322.00	\$1,322.00





G X 1 1 0   Y e a r   1

AUDIT  
and  
ACCOUNTING FORENSICS  
Government  
Exhibit  
GX110  
(excerpt)



# Government Exhibit 110

KA-331

ID	Description	Date	Check #	Check Memo	Total
KA-331			KA-331		
1204	D. Ferrand	10/10/2002	10508	(Cleaning (office) week of 7/7/2002 - 7/7/2002)	-100.00
1205	D. Ferrand	10/10/2002	10509	(Cleaning (office) week of 7/7/2002 - 7/7/2002)	-100.00

## Dr. Karron

(60 detail records)

Sum

-188,143.58

## Loan

(15 detail records)

Sum

-129,850.00

1058	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/17/2001	2953	Per Check Register -Capital Loan	-300.00
1083	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/23/2001	2961	Emergency Loan	-300.00
1059	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/26/2001	2962	Per Check Register - Salary Advance	-75,000.00
1061	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	12/21/2001	3103	Per Check Register - DBK (Vendor) Capital Loan NIST	-500.00
1072	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	3/1/2002	3144	Per Check Register - DBK (Vendor) Capital Loan NIST (per GL Loan Repay-CASI ACCT)	-1,000.00
1073	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	3/1/2002	3145	Per Check Register - DBK (Vendor) Capital Loan NIST(per GL Loan Repay-CASI ACCT)	-5,000.00
1074	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	3/7/2002	3151	Per Check Register - DBK (Vendor) Capital Loan NIST	-5,000.00
1075	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	3/12/2002	3153	Per Check Register - DBK (Vendor) Capital Loan NIST	-4,000.00
1098	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	3/25/2002	3155	(Karron Draw)(per GL DBK Loan)	-2,000.00
1076	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	4/1/2002	3160	Per Check Register - DBK (Vendor) A/P (per GL Karron Draw - DBK Loan)	-13,000.00
1079	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	5/24/2002	3184	Per Check Register - DBK (Vendor) A/P (Per GL - DBK Loan)	-2,000.00
1080	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	6/25/2002	3193	Per Check Register - DBK (Vendor) A/P (Per GL Karron Draw - DBK Loan)	-1,000.00
1106	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	8/19/2002	10407	(Per GL - DBK Loan)	-750.00
1107	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	9/13/2002	10451	(Per GL Karron Draw - DBK Loan)	-15,000.00
1108	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/4/2002	10473	(Per GL Karron Draw - DBK Loan)	-5,000.00

## Loan Repay

(7 detail records)

Sum

37,000.00

1047	Check or Online Bnkg Trnsf From Chk # 131-0684916-65 (Dr. Karron)	10/11/2001		Emergency Loan - Ck # 1006 (prior to NIST First Deposit 10/26/2001)	2,000.00
1051	Check or Online Bnkg Trnsf From Chk # 131-0684916-65 (Dr. Karron)	12/4/2001		Loan to Corp - chk # 5189	5,000.00
1050	Check or Online Bnkg Trnsf From Chk # 131-0684916-65 (Dr. Karron)	2/25/2002		Emergency Loan to Corporation - Chk # 1052	1,000.00
1042	Check or Online Bnkg Trnsf From Chk # 131-0684916-65 (Dr. Karron)	8/13/2002		loan to company - chk # 1121	20,000.00
1043	Check or Online Bnkg Trnsf From Chk # 131-0684916-65 (Dr. Karron)	8/16/2002		loan to company - chk # 1122	1,000.00
1054	Check or Online Bnkg Trnsf From Chk # 131-0684916-65 (Dr. Karron)	9/4/2002		(Check # 5301) (Per GL - DBK Loan repay NIST)	3,000.00
1045	Check or Online Bnkg Trnsf From Chk # 131-0684916-65 (Dr. Karron)	10/4/2002		chk # 1129 (Per GL - DBK Loan repay CASI)	5,000.00

# Government Exhibit 110

KA-332

ID	Description	Date	Check #	Check Memo	Total
KA-332			KA-332		
<b>Payroll</b>				(8 detail records)	Sum -35,293.58
1057	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	5/13/2002	10192	(7/2002 - 7/2002 Pay Period)	-5,019.84
1115	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	6/3/2002	10212	5/1/2002 - 5/31/2002 pay period	-5,002.25
1127	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	7/2/2002	10280	(6/1/2002 - 6/30/2002 pay period)	-25,023.17
1130	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	7/2/2002	Check Reversal # 10280 (6/1/2002 - 6/30/2002 pay period)		25,023.17
1117	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	7/5/2002	10290	(10/1/2001 - 10/31/2001 Pay Period)	-5,552.01
1120	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	7/5/2002	10291	(11/1/2001 - 11/30/2001 Pay Period)	-4,756.38
1121	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	7/5/2002	10292	(12/1/2001 - 12/31/2001 Pay Period)	-9,288.07
1055	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	8/13/2002	10401	(7/1/2002 - 7/31/2002 Payperiod)	-5,675.03
<b>Rent on Office</b>				(30 detail records)	Sum -60,000.00
1087	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/26/2001	2977	Rent on Office - (per GL -Jan 00 Rent)	-2,000.00
1088	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/26/2001	2978	Rent on Office - (per GL -Feb 00 Rent)	-2,000.00
1089	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/26/2001	2979	Rent on Office - (per GL -March 00 Rent)	-2,000.00
1090	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/26/2001	2980	Rent on Office - (per GL -April 00 Rent)	-2,000.00
1091	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/26/2001	2981	Rent on Office - (per GL -May 00 Rent)	-2,000.00
1092	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/26/2001	2982	Rent on Office - (per GL -June 00 Rent)	-2,000.00
1093	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/26/2001	2983	Rent on Office - (per GL -July 00 Rent)	-2,000.00
1094	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/26/2001	2984	Rent on Office - (per GL -Aug 00 Rent)	-2,000.00
1095	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/26/2001	2985	Rent on Office - (per GL -Sept 00 Rent)	-2,000.00
1084	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	11/9/2001	3040	Rent on Office- (per GL -Jan 01 Rent)	-2,000.00
1096	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	11/23/2001	3064	Rent on Office - (per GL -Feb 01 Rent)	-2,000.00
1085	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	12/11/2001	3093	Rent on Office - (per GL -Mar 01 Rent)	-2,000.00
1086	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	12/11/2001	3094	Rent on Office - (per GL -Apr 01 Rent)	-2,000.00
1060	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	12/14/2001	3100	Per Check Register - DBK Rent - (per GL -Dec 01 Rent)	-2,000.00
1062	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	12/28/2001	3107	- (per GL - June 01 Rent)	-2,000.00
1063	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	12/28/2001	3108	- (per GL - May 01 Rent)	-2,000.00
1064	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	1/9/2002	3115	Per Check Register - DBK Rent (Per GL July 01 Rent)	-2,000.00
1065	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	1/9/2002	3116	Per Check Register - DBK Rent (Per GL Aug 01 Rent)	-2,000.00
1066	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	1/9/2002	3117	(Per GL Sept 01 Rent)	-2,000.00

# Government Exhibit 110

KA-333

ID	Description	Date	Check #	Check Memo	Total
KA-333			KA-333		
1067	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	1/11/2002	3122	Per Check Register - DBK Rent (Per GL Jan 02 Rent) ✓	-2,000.00
1068	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	2/1/2002	3129	Per Check Register - DBK Rent (Per GL Oct 01 Rent)	-2,000.00
1069	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	2/1/2002	3131	Per Check Register - DBK Rent (Per GL Nov 01 Rent) ✓	-2,000.00
1070	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	2/1/2002	3132	Per Check Register - DBK Rent (Per GL Feb 02 Rent) ✓	-2,000.00
1071	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	3/1/2002	3143	Per Check Register - DBK Rent (Per GL March 02 Rent) ✓	-2,000.00
1097	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	3/1/2002	3142	(December 00 Rent)	-2,000.00
1077	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	4/1/2002	3164	Per Check Register - DBK Rent (per GL April 02 Rent) ✓	-2,000.00
1078	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	5/2/2002	3175	Per Check Register - DBK Rent (per GL May 02 Rent) ✓	-2,000.00
1099	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	6/4/2002	3185	(Rent)	-2,000.00
1105	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	7/15/2002	10323	(per GL July 02 Rent) ✓	-2,000.00
1081	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/7/2002	3200	Per Check Register - DBK Rent (per GL Aug 02 Rent) ✓	-2,000.00

## Network Program

(10 detail records)

Sum

-11,058.08

### Matthew Rothman

(3 detail records)

Sum

-2,400.76

1307	Matthew Rothman	9/24/2002	10470	8/7/2002 - 9/31/2002 pay period	-591.89
1314	Matthew Rothman	9/24/2002	10471	9/3/2002 - 9/15//2002 pay period	-469.53
1313	Matthew Rothman	10/8/2002	10477	9/12/2002 - 9/30/2002 pay period	-1,339.34

### Regner M Peralta

(1 detail record)

Sum

-1,096.37

1337	Regner M Peralta	10/10/2002	10478	9/1/2002 - 9/31/2002 pay period	-1,096.37
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### Robert Wine

(1 detail record)

Sum

-2,707.20

1342	Robert Wine	2/5/2002	10060	1/7/0002 - 1/31/2002 pay period	-2,707.20
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### S Albin Consultant

(3 detail records)

Sum

-2,000.00

1262	Dr. Scott Albin	11/19/2001	3014	Consult & Loan	-1,000.00
1267	Dr. Scott Albin	12/4/2001	3065		-500.00
1263	Dr. Scott Albin	1/29/2002	10046		-500.00

### Scott Albin

(2 detail records)

Sum

-2,853.75

1264	Dr. Scott Albin	7/9/2002	10266		-1,702.04
1265	Dr. Scott Albin	9/4/2002	10406		-1,151.71

## Systems Program

(21 detail records)

Sum

-49,890.33

### Charles S DaSalla

(12 detail records)

Sum

-14,864.19

Y e a r 1 S o u r c e o f F u n d s

AUDIT  
and  
ACCOUNTING  
FORENSICS

Year 1  
Source of  
Funds

Y e a r 1 S F 2 6 9 A

AUDIT  
and  
ACCOUNTING  
FORENSICS  
  
Year 1  
  
SF 269A  
  
(Rev. 7-97)

Prescribed by OMB Circulars A-102 and A-110

# FINANCIAL STATUS REPORT

(Short Form)

Public reporting burden for this collection of information is estimated to average 90 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0038), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

Please type or print legibly. The following general instructions explain how to use the form itself. You may need additional information to complete certain items correctly, or to decide whether a specific item is applicable to this award. Usually, such information will be found in the Federal agency's grant regulations or in the terms and conditions of the award. You may also contact the Federal agency directly.

Item	Entry	Item	Entry
1, 2 and 3.	Self-explanatory.		
4.	Enter the Employer Identification Number (EIN) assigned by the U.S. Internal Revenue Service.		the value of in-kind contributions applied, and the net increase or decrease in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subgrantees and other payees, and other amounts becoming owed under programs for which no current services or performances are required, such as annuities, insurance claims, and other benefit payments.
5.	Space reserved for an account number or other identifying number assigned by the recipient.		
6.	Check <i>yes</i> only if this is the last report for the period shown in item 8.	10b.	Self-explanatory.
7.	Self-explanatory.	10c.	Self-explanatory.
8.	Unless you have received other instructions from the awarding agency, enter the beginning and ending dates of the current funding period. If this is a multi-year program, the Federal agency might require cumulative reporting through consecutive funding periods. In that case, enter the beginning and ending dates of the grant period, and in the rest of these instructions, substitute the term "grant period" for "funding period."	10d.	Enter the total amount of unliquidated obligations, including unliquidated obligations to subgrantees and contractors.  Unliquidated obligations on a cash basis are obligations incurred, but not yet paid. On an accrual basis, they are obligations incurred, but for which an outlay has not yet been recorded.  Do not include any amounts on line 10d that have been included on lines 10a, b, or c.  On the final report, line 10d must be zero.
9.	Self-explanatory.	10e.	f, g, h, h and i. Self-explanatory.
10.	The purpose of columns I, II, and III is to show the effect of this reporting period's transactions on cumulative financial status. The amounts entered in column I will normally be the same as those in column III of the previous report in <i>the same funding period</i> . If this is the first or only report of the funding period, leave columns I and II blank. If you need to adjust amounts entered on previous reports, footnote the column I entry on this report and attach an explanation.	11a.	Self-explanatory.
10a.	Enter total program outlays less any rebates, refunds, or other credits. For reports prepared on a cash basis, outlays are the sum of actual cash disbursements for direct costs for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense incurred,	11b.	Enter the indirect cost rate in effect during the reporting period.
		11c.	Enter the amount of the base against which the rate was applied.
		11d.	Enter the total amount of indirect costs charged during the report period.
		11e.	Enter the Federal share of the amount in 11d.
		Note:	If more than one rate was in effect during the period shown in item 8, attach a schedule showing the bases against which the different rates were applied, the respective rates, the calendar periods they were in effect, amounts of indirect expense charged to the project, and the Federal share of indirect expense charged to the project to date.

(Follow instructions on the back)

1. Federal Agency and Organizational Element to Which Report is Submitted <b>NIST ATP</b>		2. Federal Grant or Other Identifying Number Assigned By Federal Agency <b>70NANB1H3050</b>		OMB Approval No. <b>0348-0038</b>	Page of  pages
3. Recipient Organization (Name and complete address, including ZIP code) <b>Computer Aided Surgery, Inc c/o Karron 348 East Fulton Street, Long Beach, NY 11561</b>					
4. Employer Identification Number <b>13-3990180</b>		5. Recipient Account Number or Identifying Number <b>131 068 299 665</b>		6. Final Report <input type="checkbox"/> Yes <input type="checkbox"/> No	
7. Basis <input type="checkbox"/> Cash <input checked="" type="checkbox"/> Accrual					
8. Funding/Grant Period (See instructions) From: (Month, Day, Year) <b>10/1/2001</b>		To: (Month, Day, Year) <b>9/30/2002</b>		9. Period Covered by this Report From: (Month, Day, Year) <b>10/1/2001</b>	
				To: (Month, Day, Year) <b>12/31/2001</b>	
10. Transactions:		I Previously Reported	II This Period	III Cumulative	
a. Total outlays		0	258,320	258,320	
b. Recipient share of outlays		0	37,182	37,182	
c. Federal share of outlays		0	210,000	210,000	
d. Total unliquidated obligations				11,138	
e. Recipient share of unliquidated obligations					
f. Federal share of unliquidated obligations					
g. Total Federal share(Sum of lines c and f)				\$210,000.00	
h. Total Federal funds authorized for this funding period				\$800,000.00	
i. Unobligated balance of Federal funds(Line h minus line g)				\$590,000.00	
11. Indirect Expense	a. Type of Rate(Place "X" in appropriate box) <input type="checkbox"/> Provisional <input type="checkbox"/> Predetermined <input checked="" type="checkbox"/> Final <input type="checkbox"/> Fixed				
	b. Rate	c. Base	d. Total Amount	e. Federal Share <b>0</b>	
12. Remarks: Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation.  <b>This is a corrected and revised final statement for this First Project Quarter.</b>					
13. Certification: I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.					
Typed or Printed Name and Title <b>Dr D B Karron</b>			Telephone (Area code, number and extension) <b>917 674 0828</b>		
Signature of Authorized Certifying Official			Date Report Submitted <b>July 26, 2010</b>		

# FINANCIAL STATUS REPORT

(Short Form)

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Item	Entry	Item	Entry
1, 2 and 3.	Self-explanatory.		
4.	Enter the Employer Identification Number (EIN) assigned by the U.S. Internal Revenue Service.		
5.	Space reserved for an account number or other identifying number assigned by the recipient.		
6.	Check <i>yes</i> only if this is the last report for the period shown in item 8.		
7.	Self-explanatory.		
8.	Unless you have received other instructions from the awarding agency, enter the beginning and ending dates of the current funding period. If this is a multi-year program, the Federal agency might require cumulative reporting through consecutive funding periods. In that case, enter the beginning and ending dates of the grant period, and in the rest of these instructions, substitute the term "grant period" for "funding period."		
9.	Self-explanatory.		
10.	The purpose of columns I, II, and III is to show the effect of this reporting period's transactions on cumulative financial status. The amounts entered in column I will normally be the same as those in column III of the previous report in <i>the same funding period</i> . If this is the first or only report of the funding period, leave columns I and II blank. If you need to adjust amounts entered on previous reports, footnote the column I entry on this report and attach an explanation.		
10a.	Enter total program outlays less any rebates, refunds, or other credits. For reports prepared on a cash basis, outlays are the sum of actual cash disbursements for direct costs for goods and services, the amount of indirect expense charged, the value of in-kind contributions applied, and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of actual cash disbursements for direct charges for goods and services, the amount of indirect expense incurred,		
			the value of in-kind contributions applied, and the net increase or decrease in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subgrantees and other payees, and other amounts becoming owed under programs for which no current services or performances are required, such as annuities, insurance claims, and other benefit payments.
		10b.	Self-explanatory.
		10c.	Self-explanatory.
		10d.	Enter the total amount of unliquidated obligations, including unliquidated obligations to subgrantees and contractors.
			Unliquidated obligations on a cash basis are obligations incurred, but not yet paid. On an accrual basis, they are obligations incurred, but for which an outlay has not yet been recorded.
			Do not include any amounts on line 10d that have been included on lines 10a, b, or c.
			On the final report, line 10d must be zero.
		10e.	f, g, h, h and i. Self-explanatory.
		11a.	Self-explanatory.
		11b.	Enter the indirect cost rate in effect during the reporting period.
		11c.	Enter the amount of the base against which the rate was applied.
		11d.	Enter the total amount of indirect costs charged during the report period.
		11e.	Enter the Federal share of the amount in 11d.
		Note:	If more than one rate was in effect during the period shown in item 8, attach a schedule showing the bases against which the different rates were applied, the respective rates, the calendar periods they were in effect, amounts of indirect expense charged to the project, and the Federal share of indirect expense charged to the project to date.



(Follow instructions on the back)

1. Federal Agency and Organizational Element to Which Report is Submitted <b>NIST ATP</b>		2. Federal Grant or Other Identifying Number Assigned By Federal Agency <b>70NANB1H3050</b>		OMB Approval No. <b>0348-0038</b>	Page of  pages
3. Recipient Organization (Name and complete address, including ZIP code) <b>Computer Aided Surgery, Inc c/o Karron 348 East Fulton Street, Long Beach, NY 11561</b>					
4. Employer Identification Number <b>13-3990180</b>		5. Recipient Account Number or Identifying Number <b>131 068 299 665</b>		6. Final Report <input type="checkbox"/> Yes <input type="checkbox"/> No	
7. Basis <input type="checkbox"/> Cash <input checked="" type="checkbox"/> Accrual					
8. Funding/Grant Period (See instructions) From: (Month, Day, Year) <b>10/1/2001</b>		To: (Month, Day, Year) <b>9/30/2002</b>		9. Period Covered by this Report From: (Month, Day, Year) <b>1/1/2002</b>	
				To: (Month, Day, Year) <b>3/31/2002</b>	
10. Transactions:		I Previously Reported	II This Period	III Cumulative	
a. Total outlays		<b>258,320</b>	<b>190,036</b>	<b>448,356</b>	
b. Recipient share of outlays		<b>37,182</b>	<b>0</b>	<b>37,182</b>	
c. Federal share of outlays		<b>210,000</b>	<b>240,000</b>	<b>450,000</b>	
d. Total unliquidated obligations				<b>-38,821</b>	
e. Recipient share of unliquidated obligations					
f. Federal share of unliquidated obligations					
g. Total Federal share(Sum of lines c and f)				<b>\$450,000.00</b>	
h. Total Federal funds authorized for this funding period				<b>\$800,000.00</b>	
i. Unobligated balance of Federal funds(Line h minus line g)				<b>\$350,000.00</b>	
11. Indirect Expense	a. Type of Rate(Place "X" in appropriate box) <input type="checkbox"/> Provisional <input type="checkbox"/> Predetermined <input checked="" type="checkbox"/> Final <input type="checkbox"/> Fixed				
	b. Rate	c. Base	d. Total Amount	e. Federal Share <b>0</b>	
12. Remarks: Attach any explanations deemed necessary or information required by Federal sponsoring agency in compliance with governing legislation.  <b>This is a corrected and revised final statement for this Second Project Quarter.</b>					
13. Certification: <b>I certify to the best of my knowledge and belief that this report is correct and complete and that all outlays and unliquidated obligations are for the purposes set forth in the award documents.</b>					
Typed or Printed Name and Title <b>Dr D B Karron</b>			Telephone (Area code, number and extension) <b>917 674 0828</b>		
Signature of Authorized Certifying Official			Date Report Submitted <b>July 26, 2010</b>		

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G X 1 1 2   Y e a r   1

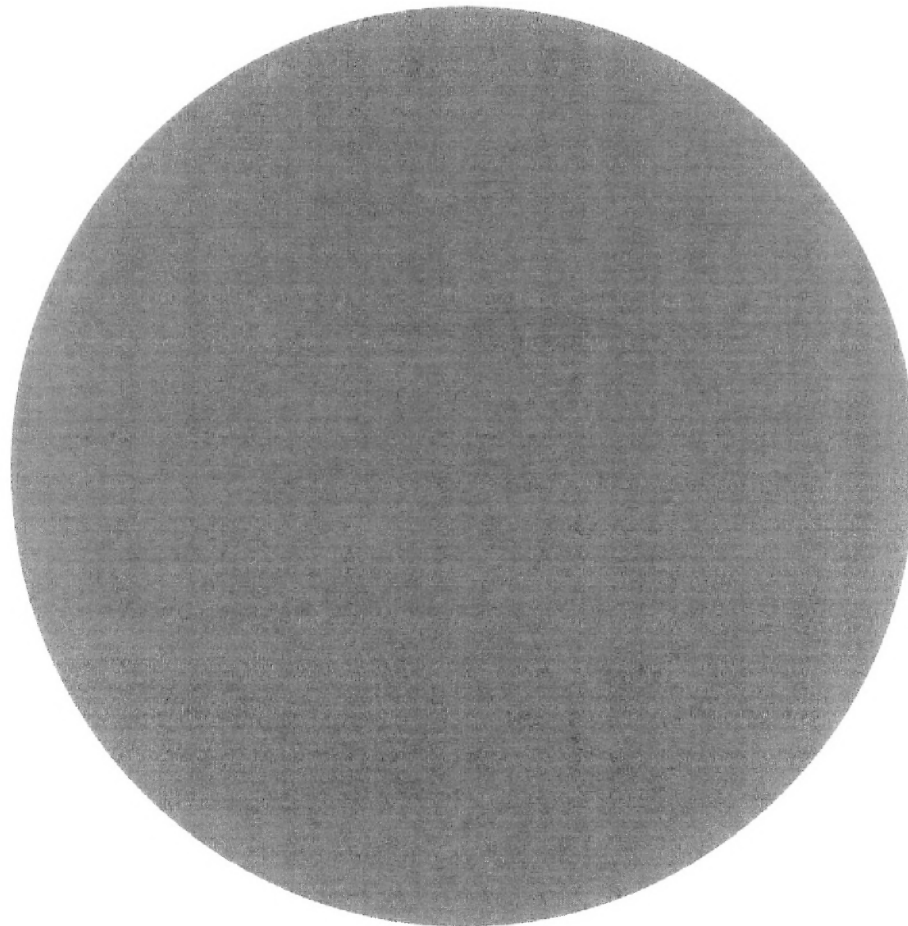
AUDIT  
and  
ACCOUNTING  
FORENSICS  
Year 1  
Government Exhibit  
GX112

KA-344

KA-344

KA-344

**CASI Bank Accounts Source of Funds for Year 1  
(10/1/2001 -9/30/2002)**



■ NIST ATP Gra



**Karron Co-**

**Funding**

**Year 1**

**Schedule**

A-460

KA-736

Case 1:08-cv-10223-NRB Document 32 Filed 08/23/10 Page 27 of 43

KA-736

KA-736

G/L	A/C	Type	Date	Number	Name	Memo	Class	Personal	Debit	Credit	Balance
2900	Opening		5/31/01								(89,531.00)
2901	AJE		10/1/01		In Kind				30,000.00		
2901	AJE		10/1/01		In Kind					(30,000.00)	0.00
2910	Deposit		6/13/01	DBK 5148			INC			(250.00)	
2910	Deposit		7/2/01	DBK 5150			INC			(1,000.00)	
2910	Deposit		7/13/01				INC			(250.00)	
2910	Deposit		7/23/01	DBK 5158			INC			(400.00)	
2910	Deposit		7/26/01	DBK 5160			INC			(200.00)	
2910	Deposit		7/31/01	DBK 5162			INC			(1,000.00)	
2910	Deposit		8/17/01	DBK 5169			INC			(1,000.00)	
2910	Deposit		8/31/01	DBK 5172			INC			(3,000.00)	
2910	Deposit		9/28/01	DBK 5180			INC			(900.00)	
2910	Deposit		10/11/01	DBK 1006			INC			(2,000.00)	
2910	Deposit		12/4/01	DBK 5189			INC			(5,000.00)	
2910	Deposit		3/21/02	DBK 1052			INC			(1,000.00)	
2910	Deposit		8/13/02	DBK 5168			INC			(20,000.00)	
2910	Deposit		8/16/02	DBK 5165			INC			(1,000.00)	(37,000.00)
2913	AJE		9/30/01	OOP 093001			INC			(156.87)	
2913	AJE		5/31/02	OOP 053102			NIST ATP			(886.18)	
2913	AJE		5/31/02	OOP 053102			NN CO-FUND		886.18		
2913	AJE		8/31/02	OOP 083102			NIST ATP			(485.54)	
2913	AJE		8/31/02	OOP 083102			NN CO-FUND		485.54		
2913	AJE		9/30/02	OOP 093002			N LLC N			(94.10)	
2913	AJE		9/30/02	OOP 093002			NN CO-FUND		94.10		(156.87)
2914	Transfer		6/28/01		From MC					(1,262.75)	
2914	Transfer		7/30/01		From MC					(1,287.16)	
2914	Transfer		8/29/01		From MC					(1,403.27)	
2914	Transfer		9/28/01		From MC					(3,843.61)	
2914	AJE		9/30/01	MC DBK	Personal		DBK	2,589.78			(5,207.01)
2914	Transfer		10/30/01		From MC					(7,566.66)	
2914	Transfer		11/22/01		From MC					(1,975.41)	
2914	Transfer		12/31/01		From MC					(3,222.62)	
2914	AJE		12/31/01	MC DBK	Personal		DBK	5,582.32			
2914	AJE		12/31/01		Co-Funding		NN CO-FUND		7,182.37		(5,207.01)
2914	Transfer		1/29/02		From MC					(3,507.53)	
2914	Transfer		2/28/02		From MC					(1,785.22)	
2914	Transfer		3/28/02		From MC					(3,303.95)	
2914	Transfer		4/26/02		From MC					(3,962.10)	
2914	Transfer		5/29/02		From MC					(1,311.07)	
2914	AJE		5/31/02	MC DBK	Personal		DBK	6,121.40			
2914	AJE		5/31/02		Co-Funding		NN CO-FUND		7,694.40		(5,261.08)
2914	Transfer		6/28/02		From MC					(5,231.64)	
2914	Transfer		7/30/02		From MC					(3,722.58)	
2914	Transfer		8/29/02		From MC					(6,669.95)	
2914	AJE		8/31/02	MC DBK	Personal		DBK	4,664.99			
2914	AJE		8/31/02		Co-Funding		NN CO-FUND		10,859.18		
2914	Transfer		9/30/02		Personal					(5,702.08)	(11,063.16)
								18,958.49	57,201.77	(124,380.29)	(137,751.03)
<b>Summary</b>							Reference	Personal	Debit	Credit	Balance
			5/31/01	Opening							(89,531.00)
										(37,000.00)	(37,000.00)
										(30,000.00)	
									30,000.00		
										(156.87)	(156.87)
										(1,465.82)	(57,201.77)
									1,465.82		57,201.77
										(55,757.60)	
								18,958.49			
									25,735.95		(11,063.16)
								18,958.49	57,201.77	(124,380.29)	(137,751.03)
											9/30/02
<b>Monies from DB Karron FYE 9/30/02</b>											

AA 009



KA-898

KA-898

KA-898

## **Co-Funding by DB Karron**

Personal checks were deposited into the corporate checking accounts.

G/L A/C 2910

G/L A/C 4709, 4711, 4712

Personal checks were used to pay corporate expenses.

G/L A/C 2911

G/L A/C 4912

Personal cash was advanced for out of pocket expenses like taxis.

G/L A/C 2913

Mastercard was used to pay both business and personal expenses.

These expenses were segregated properly

G/L A/C 2914

Loans and advances to DB Karron are A/C 1900.

Monies loaned to corporation from DB Karron are A/C 2900

When grant started the corporation owed DB Karron

\$ 89,531.00 G/L A/C 2901.

**Small businesses are notorious for back and forth activity from their personal and business accounts and credit cards.**

## **Co-Funding by DB Karron**

**BAC ~~QAC~~ 295**

# **Karron Co- Funding Check 5180 for \$900**

DR. D. B. KARRON

SSN 054-42-5466

PH. 212-686-8748

300 E. 33RD ST., APT. 4N  
NEW YORK, NY 10016

$\frac{1-2}{210}$  131

5180

Date 28 Sept 01

Pay to the order of Computer Aided Surgery Inc \$ 900.00  
NINE HUNDRED 00/100 Dollars



**CHASE**

The Chase Manhattan Bank  
450 Third Avenue  
New York, NY 10016

memo Emergency

D. B. Karron MP

⑆021000021⑆131068491665⑆

5180

⑆0000090000⑆

021000021 09/28/01  
06209 1 51

28094736867800001393

CASH  
8131068491665  
28094736867800001393

# **Karron Co- Funding Check 5189 for \$5,000**

DR. D. B. KARRON

SSN 054-42-5466

PH. 212-686-8748

300 E. 33RD ST., APT. 4N

NEW YORK, NY 10016

1-2  
210 131

5189

Date 7 Dec 2007

Pay to the order of

Computer Aided Surgery \$ 5,000.00

Five and 00/100

Dollars

 Security Features  
Included  
Details on back



**CHASE**

The Chase Manhattan Bank  
450 Third Avenue  
New York, NY 10016

memo

Loan to Corp

DB/Karron

MP

⑆021000021⑆131068491665⑆

5189

⑆0000500000⑆

RENAISSANCE

**The security features listed below, as well as those not listed, exceed industry guidelines.**

**Security Features:**

- **Advanced Signature Line**
  - Small line in signature area indicates ink is carbonized into paper
  - Ink is cleared into fibers, deep-colored and permanent
- **Chemically Sensitive Paper**
  - Resistant to spotting, discoloration and staining
- **Embossing of Full Segment**
  - Assurance of "Genuine Document"
- **Overlaid on back of check**
  - Average on back of check

**For more details on the conditions in which the "Check" features are available, visit the Federal Reserve Board of Governors' REG.CC**

# **Karron Co- Funding Check 5301 for \$3000**

CASI  
13/075 873 565



# **Karron Co- Funding Check 1006 for \$2000**

1006

**D. B. KARRON, PH.D.**  
SS #054-42-5466 VOICE: (212) 686-8748  
300 EAST 33RD STREET, APARTMENT 4N  
NEW YORK, NEW YORK 10016

**THE CHASE MANHATTAN BANK**  
NEW YORK, NY 10016  
1-2-210

10/11/2001

PAY TO THE ORDER OF **Computer Aided Surgery, Inc.**

\$\*\*2,000.00

Two Thousand and 00/100

DOLLARS

Computer Aided Surgery, Inc.  
300 East 33rd Street  
Suit 4N  
New York, New York 10016

VOID IF NOT CASHED IN 30 DAYS

MEMO emergency loan

*D.B. Karron*

⑈001006⑈ ⑆021000021⑆ 131068491665⑈

⑈0000200000⑈

FOR DEPOSIT ONLY  
TO THE ACCOUNT OF  
COMPUTER AIDED SURGERY, INC.  
d/b/a CASI  
# 13-106-829-9665

021006 10 11 01  
000 000 1 5  
5306109308

7300082122



# **Karron Co- Funding Check 1052 for \$1,000**

1052

D. B. KARRON, PH.D.  
SS #054-42-5466 VOICE: (212) 686-8748  
300 EAST 33RD STREET, APARTMENT 4N  
NEW YORK, NEW YORK 10016

THE CHASE MANHATTAN BANK  
NEW YORK, NY 10016  
1-2-210

2/25/2002

PAY TO THE ORDER OF Computer Aided Surgery, Inc.

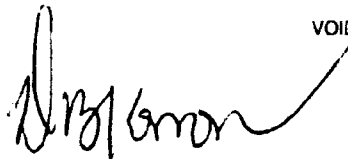
\$ \*\*1,000.00

One Thousand and 00/100..... DOLLARS

Computer Aided Surgery, Inc.  
300 East 33rd Street  
Suit 4N  
New York, New York 10016

VOID IF NOT CASHED IN 30 DAYS

MEMO emergency loan to corporation



⑈001052⑈ ⑆021000021⑆ 131068491665⑈

⑈0000100000⑈

FOR DEPOSIT ONLY  
TO THE ACCOUNT OF  
COMPUTER AIDED SURGERY, INC  
d/b/a CASI  
# 13-106-829-9665

02/03/02 12/35/02

157 031 51

3308479208

780494719

# **Karron Co- Funding Check 1121 for \$20,000**

1121

**D. B. KARRON, PH.D.**  
SS #054-42-5466 VOICE: (212) 686-8748  
300 EAST 33RD STREET, APARTMENT 4N  
NEW YORK, NEW YORK 10016

THE CHASE MANHATTAN BANK  
NEW YORK, NY 10016  
1-2-210

8/12/2002

PAY TO THE ORDER OF Computer Aided Surgery, Inc.

6-3

\$\*\*20,000.00

Twenty Thousand and 00/100

DOLLARS

Computer Aided Surgery, Inc.  
300 East 33rd Street  
Suite 4N  
New York, New York 10016

VOID IF NOT CASHED IN 30 DAYS

MEMO loan to company

*D.B. Karron*

⑈001121⑈ ⑆021000021⑆ ⑆131068491665⑈

⑈0002000000⑈

FOR DEPOSIT ONLY  
TO THE ACCOUNT OF  
COMPUTER AIDED SURGERY, INC.  
d/b/a CASI  
# 13-106-829-9665

8-9

*5/5*

021000021 08/13/02  
03519 11  
083 0131 51  
2800167212

70000062289

FOR DEPOSIT ONLY  
TO THE ACCOUNT OF  
COMPUTER AIDED SURGERY, INC.  
d/b/a CASI  
# 13-106-829-9665

# **Karron Co- Funding Check 1122 for \$1,000**



1122

**D. B. KARRON, PH.D.**  
SS #054-42-5466 VOICE: (212) 686-8748  
300 EAST 33RD STREET, APARTMENT 4N  
NEW YORK, NEW YORK 10016

THE CHASE MANHATTAN BANK  
NEW YORK, NY 10016  
1-2-210

8/16/2002

PAY TO THE ORDER OF Computer Aided Surgery, Inc.

\$\*\*1,000.00

One Thousand and 00/100

DOLLARS

Computer Aided Surgery, Inc.  
300 East 33rd Street  
Suite 4N  
New York, New York 10016

VOID IF NOT CASHED IN 30 DAYS

MEMO loan to company



⑈001122⑈ ⑈021000021⑈ ⑈131068491665⑈

⑈0000100000⑈

021000021 08/16/02  
06195 1  
088 0937 51  
4000169231

70000034983

⑈021000021⑈  
⑈131068491665⑈  
⑈0000100000⑈

207 8 0 0 0 0

131-06849-605  
C45I

# **8. Karron**

## **75K Payroll**

### **Advance**

### **and**

## **Repayment**

**(.2) Salary  
Advance and  
Repayment  
Schedule**

Capital Advance and Repayment

Date	Num	Payee/Description	Memo	Net Check Amount	Loan	Repayment	Balance
10/1/2001		Project Start					\$ -
10/11/2001	DEP 1006	Computer Aid Surgery Inc	2001-10-22 statement	\$ (2,000.00)		\$ (2,000.00)	\$ (2,000.00)
10/14/2001	2953	D B Karron, Ph.D.		\$ (300.00)	\$ 300.00		\$ (1,700.00)
10/26/2001	2962	D B Karron	2001-11-23 statement	\$ 75,000.00	\$ 75,000.00		\$ 73,300.00
12/4/2001	DEP 5189	Computer Aided Surgery	2001-12-21 statement	\$ (5,000.00)		\$ (5,000.00)	\$ 68,300.00
8/2/2002	DEP 1040	D B Karron	BELINDA Ex 110 pg 39 of 44	\$ 5,675.03		\$ (30,000.00)	\$ 38,300.00
8/16/2002	DEP 1122	Computer Aided Surgery	2002-08-23 statement	\$ (1,000.00)		\$ (1,000.00)	\$ 37,300.00
9/30/2002	DEP JRNL	D B Karron	no pay paycheck: payoff advan	\$ -		\$ (37,334.19)	\$ (34.19)
9/30/2002		First Year End					

# **(.3) Program Purchases during Program on**

# Karron

# Personal

ID	Description	Date	Check #	Check Memo	Total
1204	D. Ferrand	10/10/2002	10508	(Cleaning (office) week of 7/7/2002 - 7/7/2002)	-100.00
1205	D. Ferrand	10/10/2002	10509	(Cleaning (office) week of 7/7/2002 - 7/7/2002)	-100.00

## Dr. Karron

(60 detail records)

Sum

-188,143.58

## Loan

(15 detail records)

Sum

-129,850.00

1058	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/17/2001	2953	Per Check Register -Capital Loan	-300.00
1083	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/23/2001	2961	Emergency Loan	-300.00
1059	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/26/2001	2962	Per Check Register - Salary Advance	-75,000.00
1061	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	12/21/2001	3103	Per Check Register - DBK (Vendor) Capital Loan NIST	-500.00
1072	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	3/1/2002	3144	Per Check Register - DBK (Vendor) Capital Loan NIST (per GL Loan Repay-CASI ACCT)	-1,000.00
1073	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	3/1/2002	3145	Per Check Register - DBK (Vendor) Capital Loan NIST(per GL Loan Repay-CASI ACCT)	-5,000.00
1074	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	3/7/2002	3151	Per Check Register - DBK (Vendor) Capital Loan NIST	-5,000.00
1075	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	3/12/2002	3153	Per Check Register - DBK (Vendor) Capital Loan NIST	-4,000.00
1098	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	3/25/2002	3155	(Karron Draw)(per GL DBK Loan)	-2,000.00
1076	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	4/1/2002	3160	Per Check Register - DBK (Vendor) A/P (per GL Karron Draw - DBK Loan)	-13,000.00
1079	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	5/24/2002	3184	Per Check Register - DBK (Vendor) A/P (Per GL - DBK Loan)	-2,000.00
1080	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	6/25/2002	3193	Per Check Register - DBK (Vendor) A/P (Per GL Karron Draw - DBK Loan)	-1,000.00
1106	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	8/19/2002	10407	(Per GL - DBK Loan)	-750.00
1107	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	9/13/2002	10451	(Per GL Karron Draw - DBK Loan)	-15,000.00
1108	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/4/2002	10473	(Per GL Karron Draw - DBK Loan)	-5,000.00

## Loan Repay

(7 detail records)

Sum

37,000.00

1047	Check or Online Bnkg Trnsf From Chk # 131-0684916-65 (Dr. Karron)	10/11/2001		Emergency Loan - Ck # 1006 (prior to NIST First Deposit 10/26/2001)	2,000.00
1051	Check or Online Bnkg Trnsf From Chk # 131-0684916-65 (Dr. Karron)	12/4/2001		Loan to Corp - chk # 5189	5,000.00
1050	Check or Online Bnkg Trnsf From Chk # 131-0684916-65 (Dr. Karron)	2/25/2002		Emergency Loan to Corporation - Chk # 1052	1,000.00
1042	Check or Online Bnkg Trnsf From Chk # 131-0684916-65 (Dr. Karron)	8/13/2002		loan to company - chk # 1121	20,000.00
1043	Check or Online Bnkg Trnsf From Chk # 131-0684916-65 (Dr. Karron)	8/16/2002		loan to company - chk # 1122	1,000.00
1054	Check or Online Bnkg Trnsf From Chk # 131-0684916-65 (Dr. Karron)	9/4/2002		(Check # 5301) (Per GL - DBK Loan repay NIST)	3,000.00
1045	Check or Online Bnkg Trnsf From Chk # 131-0684916-65 (Dr. Karron)	10/4/2002		chk # 1129 (Per GL - DBK Loan repay CASI)	5,000.00

ID	Description	Date	Check #	Check Memo	Total
<b>Payroll</b>		<b>(8 detail records)</b>		<b>Sum</b>	<b>-35,293.58</b>
1057	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	5/13/2002	10192	( 7/2002 - 7/7/2002 Pay Period)	-5,019.84
1115	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	6/3/2002	10212	5/1/2002 - 5/31/2002 pay period	-5,002.25
1127	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	7/2/2002	10280	(6/1/2002 - 6/30/2002 pay period)	-25,023.17
1130	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	7/2/2002	Check Reversal # 10280 (6/1/2002 - 6/30/2002 pay period)		25,023.17
1117	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	7/5/2002	10290	(10/1/2001 - 10/31/2001 Pay Period)	-5,552.01
1120	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	7/5/2002	10291	(11/1/2001 - 11/30/2001 Pay Period)	-4,756.38
1121	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	7/5/2002	10292	(12/1/2001 - 12/31/2001 Pay Period)	-9,288.07
1055	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	8/13/2002	10401	(7/1/2002 - 7/31/2002 Payperiod)	-5,675.03
<b>Rent on Office</b>		<b>(30 detail records)</b>		<b>Sum</b>	<b>-60,000.00</b>
1087	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/26/2001	2977	Rent on Office - (per GL - <u>Jan 00</u> Rent)	-2,000.00
1088	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/26/2001	2978	Rent on Office - (per GL - <u>Feb 00</u> Rent)	-2,000.00
1089	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/26/2001	2979	Rent on Office - (per GL - <u>March 00</u> Rent)	-2,000.00
1090	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/26/2001	2980	Rent on Office - (per GL - <u>April 00</u> Rent)	-2,000.00
1091	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/26/2001	2981	Rent on Office - (per GL - <u>May 00</u> Rent)	-2,000.00
1092	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/26/2001	2982	Rent on Office - (per GL - <u>June 00</u> Rent)	-2,000.00
1093	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/26/2001	2983	Rent on Office - (per GL - <u>July 00</u> Rent)	-2,000.00
1094	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/26/2001	2984	Rent on Office - (per GL - <u>Aug 00</u> Rent)	-2,000.00
1095	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/26/2001	2985	Rent on Office - (per GL - <u>Sept 00</u> Rent)	-2,000.00
1084	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	11/9/2001	3040	Rent on Office- (per GL - <u>Jan 01</u> Rent)	-2,000.00
1096	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	11/23/2001	3064	Rent on Office - (per GL - <u>Feb 01</u> Rent)	-2,000.00
1085	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	12/11/2001	3093	Rent on Office - (per GL - <u>Mar 01</u> Rent)	-2,000.00
1086	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	12/11/2001	3094	Rent on Office - (per GL - <u>Apr 01</u> Rent)	-2,000.00
1060	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	12/14/2001	3100	Per Check Register - DBK Rent - (per GL - <u>Dec 01</u> Rent)	-2,000.00
1062	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	12/28/2001	3107	- (per GL - <u>June 01</u> Rent)	-2,000.00
1063	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	12/28/2001	3108	- (per GL - <u>May 01</u> Rent)	-2,000.00
1064	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	1/9/2002	3115	Per Check Register - DBK Rent (Per GL <u>July 01</u> Rent)	-2,000.00
1065	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	1/9/2002	3116	Per Check Register - DBK Rent (Per GL <u>Aug 01</u> Rent)	-2,000.00
1066	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	1/9/2002	3117	(Per GL <u>Sept 01</u> Rent)	-2,000.00



ID	Description	Date	Check #	Check Memo	Total
1067	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	1/11/2002	3122	Per Check Register - DBK Rent (Per GL Jan 02 Rent) ✓	-2,000.00
1068	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	2/1/2002	3129	Per Check Register - DBK Rent (Per GL Oct 01 Rent)	-2,000.00
1069	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	2/1/2002	3131	Per Check Register - DBK Rent (Per GL Nov 01 Rent) ✓	-2,000.00
1070	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	2/1/2002	3132	Per Check Register - DBK Rent (Per GL Feb 02 Rent) ✓	-2,000.00
1071	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	3/1/2002	3143	Per Check Register - DBK Rent (Per GL March 02 Rent) ✓	-2,000.00
1097	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	3/1/2002	3142	(December 00 Rent)	-2,000.00
1077	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	4/1/2002	3164	Per Check Register - DBK Rent (per GL April 02 Rent) ✓	-2,000.00
1078	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	5/2/2002	3175	Per Check Register - DBK Rent (per GL May 02 Rent) ✓	-2,000.00
1099	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	6/4/2002	3185	(Rent)	-2,000.00
1105	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	7/15/2002	10323	(per GL July 02 Rent) ✓	-2,000.00
1081	Check or Online Bnkg Trnsf To Chk # 131-0684916-65 (Dr. Karron)	10/7/2002	3200	Per Check Register - DBK Rent (per GL Aug 02 Rent) ✓	-2,000.00

## Network Program

(10 detail records)

Sum

-11,058.08

### Matthew Rothman

(3 detail records)

Sum

-2,400.76

1307	Matthew Rothman	9/24/2002	10470	8/7/2002 - 9/3//2002 pay period	-591.89
1314	Matthew Rothman	9/24/2002	10471	9/3/2002 - 9/15//2002 pay period	-469.53
1313	Matthew Rothman	10/8/2002	10477	9/12/2002 - 9/30/2002 pay period	-1,339.34

### Regner M Peralta

(1 detail record)

Sum

-1,096.37

1337	Regner M Peralta	10/10/2002	10478	9/1/2002 - 9/31/2002 pay period	-1,096.37
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### Robert Wine

(1 detail record)

Sum

-2,707.20

1342	Robert Wine	2/5/2002	10060	1/7/0002 - 1/31/2002 pay period	-2,707.20
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### S Albin Consultant

(3 detail records)

Sum

-2,000.00

1262	Dr. Scott Albin	11/19/2001	3014	Consult & Loan	-1,000.00
1267	Dr. Scott Albin	12/4/2001	3065		-500.00
1263	Dr. Scott Albin	1/29/2002	10046		-500.00

### Scott Albin

(2 detail records)

Sum

-2,853.75

1264	Dr. Scott Albin	7/9/2002	10266		-1,702.04
1265	Dr. Scott Albin	9/4/2002	10406		-1,151.71

## Systems Program

(21 detail records)

Sum

-49,890.33

### Charles S DaSalla

(12 detail records)

Sum

-14,864.19

**9. Karron**

**Co-Funding**

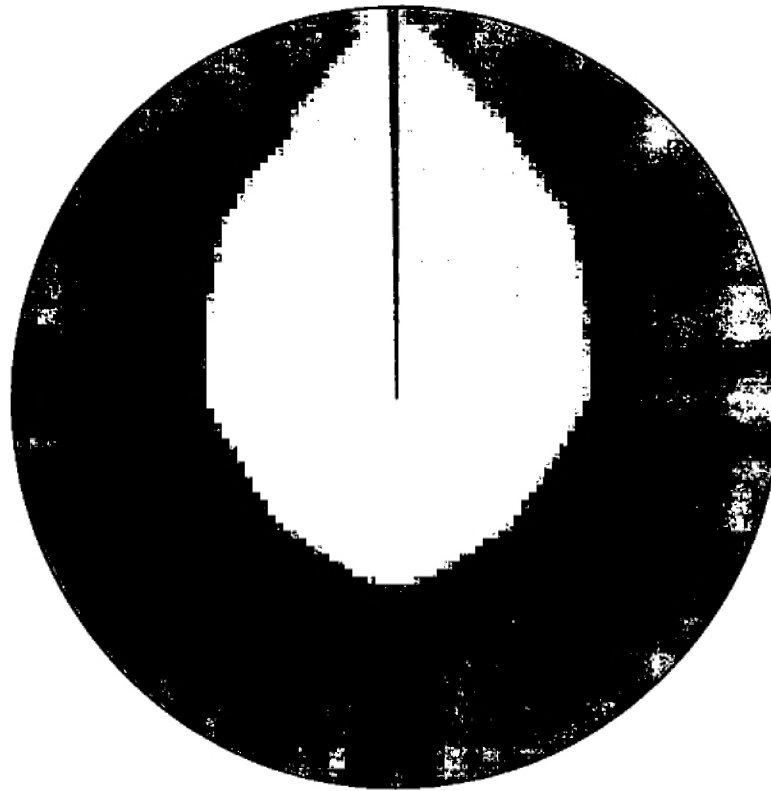
**Year 2**

**Schedule**

Date	Account	Num	Description	Memo	Category	Tag	Clr	Amount
<b>BALANCE 9/30/2002</b>								<b>0.00</b>
11/1/2002	CASI_CASH-c...	1142	Computer Aide...	[CHASE CHE...				5,000.00
11/21/2002	CASI_CASH-c...	1152	Computer Aide...October Contr...	[CHASE CHE...				2,500.00
11/22/2002	CASI_CASH-c...	1153	Computer Aide...November Co...	[CHASE CHE...				2,500.00
12/1/2002	CASI_CASH-c...	1154	Computer Aide...December Co...	[CHASE CHE...				2,500.00
1/22/2003	CASI_CASH-c...	1166	Computer Aide...CASI NIST C...	[CHASE CHE...				2,000.00
3/18/2003	CASI_CASH-c...	5339	Computer Aide...co-funding	[CHASE CHE...				2,000.00
3/25/2003	CASI_CASH-c...	5341	Computer Aide...open account	[CHASE CHE...				1,000.00
6/24/2003	CASI_CASH-c...	1222	CASI LLC	Match Payment	[CHASE CHE...			1,000.00
7/9/2003	CASI_CASH-c...	1228	CASI LLC	CASI NIST A...	[CHASE CHE...			20,000.00
8/14/2003	CASI_CASH-c...	1243	CASI LLC	CASI NIST A...	[CHASE CHE...			25,000.00
<b>10/1/2002 - 9/30/2003</b>								<b>63,500.00</b>
<b>BALANCE 9/30/2003</b>								<b>63,500.00</b>
<b>TOTAL INFLOWS</b>								<b>63,500.00</b>
<b>TOTAL OUTFLO...</b>								<b>0.00</b>
<b>NET TOTAL</b>								<b>63,500.00</b>

AUDIT  
and  
ACCOUNTING  
FORENSICS  
Government  
Exhibit  
GX113

**CASI Bank Accounts Source Of Funds Year 2  
(10/1/2002 -6/30/2003)**



■ NIST ATP Grant  
■ Miscellaneous Deposits

Y e a r 2 K a r r o n C h e c k s

AUDIT  
and  
ACCOUNTING  
FORENSICS  
Year 2  
Karron  
Checks

**(.2) Karron**  
**Check 1142**  
**for \$5000**

1142

KA-378

D. B. KARRON, PH.D.

SS #054-42-5486 VOICE: (212) 686-8748  
300 EAST 33RD STREET, APARTMENT 4N  
NEW YORK, NEW YORK 10016

KA-378

THE CHASE MANHATTAN BANK  
NEW YORK, NY 10016  
1-2-210

KA-378

10/31/2002

PAY TO THE  
ORDER OF

Computer Aided Surgery, Inc.

\$5,000.00

Five Thousand and 00/100

DOLLARS

Computer Aided Surgery, Inc.  
300 East 33rd Street  
Suite 4N  
New York, New York 10016

VOID IF NOT CASHED IN 30 DAYS

MEMO

#001142# 0210000210131068491665#

#0000500000#

004114 11/13/2002 1000 1 28  
JPMORGAN CHASE METROTECH

5300000201

FOR DEPOSIT ONLY  
TO THE ACCOUNT OF  
COMPUTER AIDED SURGERY, INC.  
d/b/a CASI  
# 13-106-829-9665

JPMORGAN CHASE BANK  
NEW YORK, NY 10016  
1-2-210

2707



**(.3) Karron**  
**Check 1152**  
**for \$2,500**



**(.4) Karron**  
**Check 1153**  
**for \$2,500**

1153

KA-382

**D. B. KARRON, PH.D.**SS #054-42-5486 VOICE: (212) 686-8748  
300 EAST 33RD STREET, APARTMENT 4N  
NEW YORK, NEW YORK 10016

KA-382

THE CHASE MANHATTAN BANK  
NEW YORK, NY 10016  
1-2-210

KA-382

11/22/2002

PAY TO THE ORDER OF Computer Aided Surgery, Inc.

\$ \*\*2,500.00

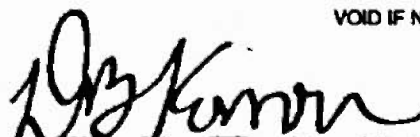
Two Thousand Five Hundred and 00/100

DOLLARS

Computer Aided Surgery, Inc.  
300 East 33rd Street  
Suite 4N  
New York, New York 10016

VOID IF NOT CASHED IN 30 DAYS

MEMO November Contribution



⑈001153⑈ ⑆021000021⑆131068491665⑈

⑈0000250000⑈

021000021 12/10/02  
003 0131 51

3000205009 7400088004

J. MORGAN C. M. E. M. E. M.  
000512703  
4 MRS  
MARTIN, J. M. E. M. E. M.  
P 021000021-1

Security Features Included. Details on back

**(.5) Karron**  
**Check 1154**  
**for \$2,500**

KA-384

D. B. KARRON, PH.D.  
SS #054-42-5406 VOICE: (212) 688-8748  
300 EAST 33RD STREET, APARTMENT 4N  
NEW YORK, NEW YORK 10016

KA-384

THE CHASE MANHATTAN BANK  
NEW YORK, NY 10016  
1-2-210

1154  
KA-384

12/1/2002

PAY TO THE ORDER OF Computer Aided Surgery, Inc.

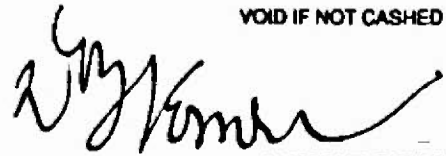
\$\*\*2,500.00

Two Thousand Five Hundred and 00/100

DOLLARS

Computer Aided Surgery, Inc.  
300 East 33rd Street  
Suite 4N  
New York, New York 10016

VOID IF NOT CASHED IN 30 DAYS



MEMO December Contribution

⑈001154⑈ ⑆021000021⑆131068491665⑈

⑈0000250000⑈

Details on back. Security Features Indicated

021066021 12/12/02  
07670 1  
963 9131 31  
4000768453 7100102396

0351 50610  
RECEIVED  
FEB 12 2003  
FEB 12 2003

CAST  
131 068299665

**(.6) Karron**  
**Check 1166**  
**for \$2,000**

1166

KA-386

1/22/2003

KA-386

THE CHASE MANHATTAN BANK  
NEW YORK, NY 10016  
1-2-210

D. B. KARRON, PH.D.

SS #064-42-5466 VOICE: (212) 686-8748  
300 EAST 33RD STREET, APARTMENT 4N  
NEW YORK, NEW YORK 10016

PAY TO THE ORDER OF Computer Aided Surgery, Inc.

\$ \*\*2,000.00

Two Thousand and 00/100

DOLLARS

VOID IF NOT CASHED IN 30 DAYS

MEMO NIST Contribution

⑈001166⑈ ⑆021000021⑆ ⑆131068491665⑈

⑈0000200000⑈

021000021

01/23/03

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52000083479 72000033857

FOR DEPOSIT ONLY  
TO THE ACCOUNT OF  
COMPUTER AIDED SURGERY, INC.,  
d/b/a CASI  
# 13-106-829-9665



**(.7) Karron**  
**Check 5339**  
**for \$2,000**

DR. D. B. KARRON  
SSN 054-42-5466  
PH. 212-686-8748  
300 E. 33RD ST., APT. 4N  
NEW YORK, NY 10016

1-2  
210

5339

KA-388

KA-388

DATE

18 MAR 2002

KA-388

Computer Aided Surgery  
PAY TO THE ORDER OF

\$ 2000 <sup>00</sup>/<sub>100</sub>

Two Thousand and 00/100

DOLLARS



CHASE

JPMorgan Chase Bank  
450 Third Avenue  
New York, NY 10016

MEMO CG INVEST LAST

[Signature]

⑆02⑆100002⑆⑆13⑆068491665⑆ 5339 ⑆0000200000⑆

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CASH  
131068499665

**(.8) Karron**  
**Check 5341**  
**for \$1,000**

DR. D. B. KARRON  
SSN 054-42-5466  
PH. 212-686-8748  
300 E. 33RD ST., APT. 4N  
NEW YORK, NY 10016

1-2-191  
218

5341

KA-390

KA-390

DATE 25 MARCH

KA-390

Computer Aided Surgery LLC \$ 1000.00  
PAY TO THE ORDER OF

ONE THOUSAND and 00/100 DOLLARS

 **CHASE** JPMorgan Chase Bank  
450 Third Avenue  
New York, NY 10016

MEMO Open Heart D. B. Karron

⑆021000021⑆131068491665⑆ 5341 ⑈0000100000⑈

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Deposit by  
131077133165  
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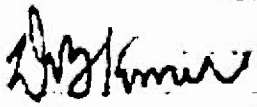
**(.9) Karron  
check 1222  
for \$1000.**

KA-392

KA-392

KA-392



<b>D. B. KARRON, PH.D.</b> 88 888-42-4488 VOICE (212) 688-8748 300 EAST 33RD STREET, APARTMENT 4N NEW YORK, NEW YORK 10018		1222
THE CHASE MANHATTAN BANK NEW YORK, NY 10018 1-8-818		6/24/2003
PAY TO THE ORDER OF <b>CASI LLC</b>		<b>\$1,000.00</b>
One Thousand and 00/100		DOLLARS
<b>CASI LLC</b> 300 East 33rd Street Suite 4N New York, New York 10018		VOID IF NOT CASHED IN 90 DAYS
MEMO Match Payment		
⑆001222⑆ ⑆021000021⑆ 131068491665⑆		⑆0000100000⑆

12111121 11/24/02 03 1122 1 31 <b>3400365515 15</b>	JUN 24 2003	P WOODMAN CHASE BANK 100 WALL STREET 4 FL NEW YORK, NY 10038 ⑆021000021⑆	1352 01419	CASI LLC 131077133166
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**(.10) Karron  
check 1228  
for \$20,000**

1228

KA-394

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SS #054-42-5466 VOICE: (212) 686-8748  
300 EAST 33RD STREET, APARTMENT 4N  
NEW YORK, NEW YORK 10016

KA-394

THE CHASE MANHATTAN BANK  
NEW YORK, NY 10016  
1-2-210

KA-394

7/9/2003

PAY TO THE ORDER OF CASI LLC

\$\*\*20,000.00

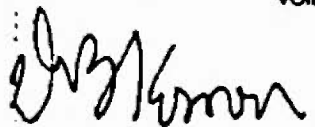
Twenty Thousand and 00/100

DOLLARS

CASI LLC

VOID IF NOT CASHED IN 30 DAYS

MEMO NIST ATP Program Contribution



⑈001228⑈ ⑆021000021⑆131068491665⑈

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KA-395

CASI LLC

131077133165

0206 56010

JPMORGAN CHASE BANK

600 NEW YORK

4 CLAC

C# 206

BKLYN, NY 11245

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KA-395

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07/09/03

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021000021

003

KA-395

**(.11) Karron**  
**Check 1243**  
**for \$25,000**

1243

397

D. B. KARRON, PH.D.

SS #054-42-5486 VOICE: (212) 686-8748  
300 EAST 33RD STREET, APARTMENT 4N  
NEW YORK, NEW YORK 10016

KA-397

THE CHASE MANHATTAN BANK  
NEW YORK, NY 10016  
1-2-210

KA-397

8/13/2003

PAY TO THE ORDER OF CASI LLC

\$\*\*25,000.00

Twenty-Five Thousand and 00/100

DOLLARS

CASI LLC

300 East 33rd Street Suite 4n  
New York, NY 10016

VOID IF NOT CASHED IN 30 DAYS

8-5

MEMO

⑈001243⑈ ⑆021000021⑆ ⑆31068491665⑈

⑈0002500000⑈

Drawing on Back



Security Features Imprinted.

CASI LLC  
131077133165  
deposit only

1556 72051

THE CHASE MANHATTAN BANK  
NEW YORK, NY 10016  
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021000021 08/15/03  
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008 0131 51

3400655936 0600108335

KARRON

Personal

MasterCard

Statements



PAYMENT DUE DATE

11/23/01

NEW BALANCE

\$248.44

MINIMUM DUE

\$10.00

Print change of address and telephone number:

New Address:

Telephone: ( )

DR D. B. KARRON

SUITE 4N

300 EAST 33RD STREET

NEW YORK NY 10016-9406

005025

526327100928187200024844000010006

ACCOUNT NUMBER: 5263 2710 0928 1872

Enter Amount Enclosed In Boxes Below

\$

Please make check or money order payable to: CHASE GOLD MASTERCARD.

Meals  
Highlighter  
in

DEFENDANT'S EXHIBIT

288-1

P.O. BOX 15836

WILMINGTON DE 19886-5836

10-31-01

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Chase Select Banking Gold MasterCard®

ACCOUNT NUMBER: 5263 2710 0928 1872

NEW BALANCE \$248.44	PAYMENT DUE DATE 11/23/01	STATEMENT CLOSING DATE 10/30/01	DAYS IN BILLING CYCLE 32
TOTAL CREDIT LINE \$16,500	TOTAL AVAILABLE CREDIT \$16,261	CASH ACCESS LINE \$16,500	AVAILABLE CASH \$16,261

	FOR ULTIMATE REWARDS CUSTOMER SERVICE: CALL 1-800-243-6533		
	ULTIMATE REWARDS POINTS EARNED THIS MONTH	TOTAL POINTS AVAILABLE FOR REDEMPTION	POINTS EXPIRING ON 12/31/02
	5,244	52,543	7,749

Here is your Account Summary:

	TOTAL
Previous Balance	\$8752.76
(-) Payments, Credits	16279.16
(+) Purchases, Cash, Debits	7566.66
(+) FINANCE CHARGES	208.18
(=) New Balance	248.44
Minimum Payment Due	\$10.00

Donate to the NY State World Trade Center Relief Fund, New York City Twin Towers Fund, Or American Red Cross. Call toll-free 1-866-452-0127 100% of your donation goes to the needy

Your charges and credits at a glance:

TRAN. DATE	POST DATE	REF. NO.	DESCRIPTION OF TRANSACTIONS	CREDITS	CHARGES
10/12	10/12	GQKP	ATM PAYMENT NY - THANK YOU	300.00	
10/29	10/29	GQM7	TELLER PAYMENT NY - THANK YOU	15656.17	
08/26	08/26	B6LN	MEE NOODLE SHOP & GRILL NEW YORK NY		21.40
08/29	08/29	ZQ3M	LOEWS #185 KIPS BAY NEW YORK NY		16.50
08/29	08/29	DP18	SIDS BIKE SHOP NEW YORK NY		37.86
08/27	08/29	NDG6	FOOD EMPORIUM #767 S15 NEW YORK CITY NY		20.29
08/29	08/29	2613	INNOVATION LUGGAGE #2 NEW YORK NY		59.63
08/30	08/30	XMEY	DUANE READE #197 NEW YORK NY		13.51
08/30	08/30	XMQX	DUANE READE #197 NEW YORK NY		30.64
08/30	08/30	Q82X	MEE NOODLE SHOP & GRILL NEW YORK NY		13.96
10/01	10/01	8E8A	GRISTEDES 99 SN3 NEW YORK NY		19.50
10/01	10/01	96XQ	J R I S INC BOCA RATON FL		408.22
10/02	10/02	YG16	OFFICE DEPOT #606 NEW YORK NY		81.00
10/02	10/02	ZF4A	RN REAL.COM ONLINE 208-874-2650 WA		14.99
10/03	10/03	9V/NW	NY SPORTS CLUB-FTC-C # TEL2123886398 NY		79.00
10/03	10/03	K312	DR SYMANTEC US 800-856-6426 MN		77.40
10/03	10/03	WEY3	DATAVISION NEW YORK NY		229.47
10/03	10/03	JYRQ	MAULTYACOS NEW YORK NY		17.84
10/04	10/04	77VD	GRISTEDES 99 SN3 NEW YORK NY		35.95
10/04	10/04	M64M	SUPER RUNNERS SHOP NEW YORK NY		4.77
10/04	10/04	9E4Y	PATRICIA DALIA NEW YORK NY		150.08
10/04	10/04	4DP0	CAFE INDULGE NEW YORK NY		14.05
10/06	10/06	20F5	CONRADTS NEW YORK NY		41.02
10/06	10/06	EZWP	DUANE READE #197 NEW YORK NY		5.26
10/06	10/06	2EVY	OFFICE DEPOT #606 NEW YORK NY		36.77
10/06	10/06	2EYH	OFFICE DEPOT #606 NEW YORK NY		5.40
10/06	10/06	5K30	HOMEFRONT TRUE VALUE NEW YORK NY		29.00
10/06	10/06	6A98	MARU MARU SUSHI NEW YORK NY		56.00







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ACCOUNT NUMBER: 5263 2710 0628 1872

Your charges and credits at a glance:

TRAN DATE	POST DATE	REF NO.	DESCRIPTION OF TRANSACTIONS	CREDITS	CHARGES
10/06	10/06	1000L	KIPS BAY OPTICAL LTD NEW YORK NY		5.00
10/07	10/07	6Y84	DATAVISION NEW YORK NY		940.60
10/07	10/07	100MB	MEE NOODLE SHOP & GRIL NEW YORK NY		14.65
10/09	10/09	1620	GRISTEDES 89 SN3 NEW YORK NY		23.55
10/09	10/09	3LFF	COLUMBIA HOME INTERIOR NEW YORK NY		541.25
10/10	10/10	P2NB	AMERICAN MEDIA SYSTEMS TEL510330211 CA	288.00	
10/10	10/10	P2X1	AMERICAN MEDIA SYSTEMS TEL510330211 CA	34.99	
10/11	10/11	838B	DUANE READE #197 NEW YORK NY		35.54
10/12	10/12	AL1G	GRISTEDES 89 SN3 NEW YORK NY		9.79
10/13	10/13	YERX	AMER MUS NAT HIST #210 NEW YORK NY		2.44
10/13	10/13	0N0J	OFFICE DEPOT #505 NEW YORK NY		2.70
10/13	10/13	100MV	MEE NOODLE SHOP & GRIL NEW YORK NY		23.00
10/14	10/14	7LX4	GRISTEDES 89 SN3 NEW YORK NY		10.27
10/15	10/15	0HXB	CRIGO 1632 GILL'S AUTOM ORLEANS MA		14.84
10/16	10/16	DVSH	PTOWN BIKES PROVINCETOWN MA		101.78
10/16	10/16	FT0E	MUSSEL BEACH HEALTH CL PROVINCETOWN MA		36.00
10/16	10/16	LGWP	A & P #182 S16 PROVINCETOWN MA		36.23
10/17	10/17	AC3P	ARNOLDS BICYCLE SHOP PROVINCETOWN MA		13.60
10/18	10/18	1HTG	MARTIN HOUSE (THE) PROVINCETOWN MA		423.15
10/18	10/18	NY12	PENNSYLVANIA COMPANY PROVINCETOWN MA		89.97
10/18	10/18	86HS	COCONUTS PROVINCETOWN MA		208.95
10/18	10/18	37ED	CAPE TIP SPORTSWEAR PROVINCETOWN MA		127.08
10/19	10/19	02W1	CYBER COVE PROVINCETOWN MA		7.00
10/19	10/19	88LP	GC PILGRIM MONUMENT AD PROVINCETOWN US		12.00
10/20	10/20	1000L	KIPS BAY OPTICAL LTD NEW YORK NY		105.00
10/21	10/21	1000L	KIPS BAY OPTICAL LTD NEW YORK NY		27.80
10/21	10/21	K9RN	ROOMERS GUEST HOUSE PROVINCETOWN US		731.50
10/22	10/22	WVFB	GRISTEDES 89 SN3 NEW YORK NY		18.42
10/22	10/22	8JA5	RITE AID #871 MANHATTAN NY		6.48
10/23	10/23	DVEG	DUANE READE #197 NEW YORK NY		37.81
10/23	10/23	KYMN	OFFICE DEPOT #505 NEW YORK NY		81.11
10/24	10/24	00MB	DUANE READE #197 NEW YORK NY		13.61
10/24	10/24	0884	COLUMBIA HOME INTERIOR NEW YORK NY		48.71
10/24	10/24	AH1H	CAFE INDULGE NEW YORK NY		11.25
10/24	10/24	YBXL	CASH ADVANCE		2000.00
10/25	10/25	26Z2	GRISTEDES 89 SN3 NEW YORK NY		48.87
10/25	10/25	34FS	HAIR PRODUCT OUTLET NORTH HAVEN CT		90.17
10/26	10/26	7L44	DUANE READE #197 NEW YORK NY		10.82
10/26	10/26	60MV	SAM'S NOODLE SHOP NEW YORK NY		24.85
10/27	10/27	SZ84	DUANE READE #197 NEW YORK NY		21.70
10/27	10/27	0PBN	MARU MARU SUSHI NEW YORK NY		28.96
10/28	10/28	SEAP	DUANE READE #197 NEW YORK NY		10.83
10/28	10/28	KDGG	KIPS BAY HARDWARE TV NEW YORK NY		70.27

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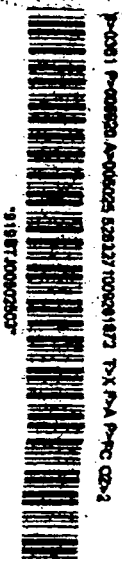
Here's how we determined your Finance Charge\*:

	DAILY PERIODIC RATE	AVERAGE DAILY BALANCE	PERIODIC / MIN. FINANCE CHARGE	TRANSACTION FEE FINANCE CHARGE	TOTAL FINANCE CHARGE	NOMINAL ANNUAL PERCENTAGE RATE	ANNUAL PERCENTAGE RATE
Purchases	V 0.04110%	\$10898.51	\$143.33	\$0.00	\$143.33	15.00%	15.00%
Cash	V 0.04808%	\$315.81	\$4.85	\$60.00	\$64.85	17.58%	38.91%

\* Please see reverse side for balance computation method and other important information.



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PAYMENT DUE DATE 12/24/01 NEW BALANCE \$117.58 MINIMUM DUE \$10.00

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ACCOUNT NUMBER: 5263 2710 0928 1872

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ACCOUNT NUMBER: 5263 2710 0928 1872

NEW BALANCE \$117.58	PAYMENT DUE DATE 12/24/01	STATEMENT CLOSING DATE 11/28/01	DAYS IN BILLING CYCLE 30
TOTAL CREDIT LINE \$16,600	TOTAL AVAILABLE CREDIT \$16,382	CASH ACCESS LINE	AVAILABLE CASH 0.00



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*MasterCard*

0.00 \* \$4,184

### Here is your Account

Previous Balance  
(-) Payments, Credits  
(+) Purchases, Cash, Debit  
(+) FINANCE CHARGES  
(=) New Balance  
Minimum Payment Due

56.72 +  
37.10 +  
16.95 +  
68.90 +  
14.10 +  
32.45 +  
226.22 \*

See out h

68.90 +  
17.90 +  
56.72 +  
4.30 +  
18.70 +  
13.75 +  
19.20 +  
16.95 +  
9.80 +  
226.22 \*

### Your charges and

TRAN. DATE	POST DATE	REF. NO.	DESCRIPTION OF TRANSACTIONS	CREDITS	CHARGES
11/08	11/08	ESN5	PAYMENT - THANK YOU	415.39	
11/12	11/12	GQKF	ATM PAYMENT NY - THANK YOU	50.00	
11/15	11/15	GQKF	ATM PAYMENT NY - THANK YOU	100.00	
11/15	11/15	GQKF	ATM PAYMENT NY - THANK YOU	45.00	
11/16	11/16	GQKL	ATM PAYMENT NY - THANK YOU	75.00	
11/20	11/20	ESR7	PAYMENT - THANK YOU	782.00	
11/24	11/24	ESS3	PAYMENT - THANK YOU	125.09	
11/28	11/28	ESSV	PAYMENT - THANK YOU	178.00	
10/30	10/31	ORZB	DUANE READE #197 NEW YORK NY		32.52
10/31	10/31	IQKE	DUANE READE #197 NEW YORK NY		8.89
10/29	10/31	BRFK	LE MONDE NEW YORK NY		88.80
10/31	10/31	QMBT	SAFE INDULGE NEW YORK NY		47.90
10/29	10/31	DL6V	MTA VENDING MACHINE SA 212-METROCARDNY		20.00
10/30	10/31	JHNJ	FOOD EMPORIUM #767 S1S NEW YORK CITY NY		52.12
11/01	11/01	5DEB	DATAVISION NEW YORK NY	334.98	
11/02	11/02	7NHS	DUANE READE #197 NEW YORK NY		3.33
11/02	11/02	ZSBK	BENJAMIN RESTAURANT AN NEW YORK NY		98.72
11/02	11/02	V12P	VESPRO OVERLAND PARK KS		10.50
11/03	11/03	D3NG	DUANE READE #197 NEW YORK NY		15.47
11/04	11/04	DSRS	DUANE READE #197 NEW YORK NY		26.68
11/04	11/04	FRZB	FOOD EMPORIUM #767 S1S NEW YORK CITY NY		26.68
11/06	11/06	8N2J	NY SPORTS CLUB-FTG-C# TEL2120000000 NY		4.30
11/07	11/07	070K	WEE NOODLE SHOP & GRILL NEW YORK NY		26.02
11/07	11/07	J3AS	FOOD EMPORIUM #767 S1S NEW YORK CITY NY		8.87
11/08	11/08	VLTE	TODAYBROS 82L NEW YORK NY		13.53
11/10	11/10	5FTT	HENRI BENDEL 14700157 NYC NY NY		7.50
11/10	11/10	MANJ	MANNO BELLO NEW YORK NY		4.50
11/10	11/10	MANJ	MANNO BELLO NEW YORK NY		

**NO**



Please enclose remit coupon from page 1 of your statement with your payment.



Chase Select Banking Gold MasterCard®  
ACCOUNT NUMBER: 5263 2710 0928 1872

Your charges and credits at a glance:

TRAN. DATE	POST DATE	REF. NO.	DESCRIPTION OF TRANSACTIONS	CREDITS	CHARGES
11/10	11/10	8R22	KIPS BAY CLEANERS NEW YORK NY		17.10
11/11	11/11	TRQ2	DUANE READE #197 NEW YORK NY		31.19
11/12	11/12	8JGN	RITE AID 4871 MANHATTAN NY		25.18
11/13	11/13	FT78	DUANE READE #197 NEW YORK NY		22.84
11/13	11/13	VEGA	GRISTEDES 99 SN3 NEW YORK NY		58.30
11/13	11/13	Z7J0	RN "REAL.COM ONLINE 206-674-2650 WA		66.98
11/14	11/14	3TP8	DUANE READE #197 NEW YORK NY		13.87
11/14	11/14	EGM1	SAM'S NOODLE SHOP NEW YORK NY		18.70
11/15	11/15	Z8K3	PATRICIA DALIA NEW YORK NY		677.80
11/15	11/15	ZMQ5	LECHTERS #062 NEW YORK NY		25.41
11/16	11/16	82Z8	GRISTEDES 99 SN3 NEW YORK NY		28.53
11/18	11/18	FPH9	SAM'S NOODLE SHOP NEW YORK NY		13.76
11/19	11/19	1R5R	DUANE READE #197 NEW YORK NY		40.73
11/19	11/19	8WQ5	MINDMAKER, INC 408-467-9200 CA		68.90
11/20	11/20	JRMV	CAFE INDULGE NEW YORK NY		19.20
11/20	11/20	YX1E	BORDERS BOOKS & MUSIC #2 NEW YORK NY		64.87
11/21	11/21	B487	FOOD EMPORIUM #787 S1S NEW YORK CITY NY		23.02
11/22	11/22	3PGR	JUNIOR'S GCS MAIN NEW YORK NY		16.95
11/23	11/23	D6F2	DUANE READE #197 NEW YORK NY		12.97
11/23	11/23	L30V	MEE NOODLE SHOP & GRIL NEW YORK NY		9.80
11/23	11/23	TR59	METRO-NORTH TVM 212-340-2020 NY		5.00
11/24	11/24	BV6A	FOOD EMPORIUM #787 S1S NEW YORK CITY NY		28.52
11/26	11/26	NEWE	DUANE READE #197 NEW YORK NY		13.10
11/27	11/27	XQAW	TSH FITNESS TRNG NEW YORK NY		104.98
11/27	11/27	H	Class Action Refund Credit	0.66	
Total of your credits and charges				2106.32	1975.41

ENROLL IN CHASE PAYMENT PROTECTOR PLAN TODAY. THE PLAN THAT HELPS PROTECT YOUR CREDIT RATING.

GOOD NEWS! ACCEPT OUR BALANCE TRANSFER OFFER AND YOU MAY BE ELIGIBLE TO REDUCE YOUR DAILY PERIODIC RATE TO BETWEEN .01641% TO .02189%. YOUR NOMINAL APR WILL RANGE FROM 5.99% TO 7.99%, DEPENDING ON THE AMOUNT YOU TRANSFER.

Here's how we determined your Finance Charge\*:

	DAILY PERIODIC RATE	AVERAGE DAILY BALANCE	PERIODIC / MIN. FINANCE CHARGE	TOTAL FINANCE CHARGE	NOMINAL ANNUAL PERCENTAGE RATE	ANNUAL PERCENTAGE RATE
Purchases	V 0.03973%	\$0.00	\$0.00	\$0.00	14.50%	0.00%
Cash	V 0.04671%	\$3.55	\$0.05	\$0.05	17.05%	17.05%

\* Please see reverse side for balance computation method and other important information.



Questions about your account? Credit Card lost or stolen? Call Chase Customer Service 24 hours a day, 7 days a week, toll-free, at 1-800-441-7681 or write PO Box 15919, Wilmington, DE 19850-5919. Para Servicio al Cliente en Español: 1-800-545-0464.





KA-405 CHASE

KA-405 ACCOUNT NUMBER: 5263 2710 0928 1872

KA-405

PAYMENT DUE DATE 01/25/02 NEW BALANCE \$134.62 MINIMUM DUE \$10.00

Enter Amount Enclosed In Boxes Below \$ [ ] [ ] [ ] [ ] [ ] [ ] [ ] [ ] Please make check or money order payable to: CHASE GOLD MASTERCARD.

MASTER 1872 2001

Change your address and telephone number online, log on to www.chase.com/cards or print here: New Address: Telephone: ( )

D. B KARRON 004826 SUITE 4N 300 EAST 33RD STREET NEW YORK NY 10016-9406

P.O. BOX 15836 WILMINGTON DE 19886-5836

526327100928187200013462000010000

Please detach at perforation and return with your payment.



Chase Select Banking Gold MasterCard® ACCOUNT NUMBER: 5263 2710 0928 1872

NEW BALANCE \$134.62	PAYMENT DUE DATE 01/25/02	STATEMENT CLOSING DATE 12/31/01	DAYS IN BILLING CYCLE 32
TOTAL CREDIT LINE \$16,500	TOTAL AVAILABLE CREDIT \$16,365	CASH ACCESS LINE \$16,500	AVAILABLE CASH \$16,365

CHASE ULTIMATE REWARDS	FOR ULTIMATE REWARDS CUSTOMER SERVICE: CALL 1-800-243-6533		
	ULTIMATE REWARDS POINTS EARNED THIS MONTH	TOTAL POINTS AVAILABLE FOR REDEMPTION	POINTS EXPIRING ON 12/31/02
	3,223	57,407	7,749

Here is your Account Summary:

	TOTAL
Previous Balance	\$117.58
(-) Payments, Credits	3205.58
(+) Purchases, Cash, Debits	3222.62
(+) FINANCE CHARGES	0.00
(=) New Balance	134.62
Minimum Payment Due	\$10.00

GREAT NEWS! GET FANTASTIC DEALS FOR LAST MINUTE HOLIDAY SHOPPING AT WWW.CHOOSCHASE.COM

Your charges and credits at a glance:

TRAN. DATE	POST DATE	REF. NO.	DESCRIPTION OF TRANSACTIONS	CREDITS	CHARGES
12/01	12/01	ESW7	PAYMENT - THANK YOU	117.58	
12/03	12/03	GQKM	ATM PAYMENT NY - THANK YOU	100.00	
12/03	12/03	ESW7	PAYMENT - THANK YOU	400.00	
12/06	12/06	ESX4	PAYMENT - THANK YOU	694.00	
12/07	12/07	ESXL	PAYMENT - THANK YOU	200.00	
12/12	12/12	ESZ1	PAYMENT - THANK YOU	1494.00	
12/12	12/12	ESZ1	PAYMENT - THANK YOU	200.00	
11/30	11/30	7E32	GRISTEDES 99 SN3 NEW YORK NY		-40.91
11/28	11/30	0PE9	TODARO BROS SZL NEW YORK NY		-20.24
11/28	11/30	QWTK	PATRICIA DALIA NEW YORK NY		-677.50
11/28	11/30	T3ML	RITE AID STORE 4971 MANHATTAN NY		-10.57
11/28	11/30	09Z4	MEE NOODLE SHOP & GRIL NEW YORK NY		-9.80
11/29	11/30	J0A2	FOOD EMPORIUM #767 S1S NEW YORK CITY NY		-46.11
11/30	11/30	BDOK	VESPRO OVERLAND PARK KS		-109.90
11/26	11/30	LGBJ	EL NUEVO FLORIDITA NEW YORK NY		-21.40
12/01	12/01	BLG2	2ND AVE DELI 09690017 NEW YORK CITY NY		-45.39
12/01	12/01	06RS	GRISTEDES 99 SN3 NEW YORK NY		-17.66
12/01	12/01	GRHG	LECHTERS HOME STORE #2 NEW YORK NY		-18.92
12/02	12/02	D26M	HONG KONG SUPERMKT SJG NEW YORK NY		-56.70
12/03	12/03	A3FQ	NY SPORTS CLUB-FTC-C # TEL2123868598 NY		-79.00
12/03	12/03	ARNF	GRISTEDES 99 SN3 NEW YORK NY		-22.88
12/04	12/04	NGYF	DUANE READE #197 NEW YORK NY		-11.76
12/04	12/04	AS2T	GRISTEDES 99 SN3 NEW YORK NY		-38.85
12/04	12/04	GG1T	THE CORNER DRUG STORE NEW YORK NY		-172.05
12/05	12/05	V1WY	CURRY IN A HURRY NEW YORK NY		-15.78
12/05	12/05	MMMX	MEE NOODLE SHOP & GRIL NEW YORK NY		-9.15
12/05	12/05	GKHE	FOOD EMPORIUM #767 S1S NEW YORK CITY NY		-38.99
12/06	12/06	0GV2	PATRICIA DALIA NEW YORK NY		-840.00





Please enclose remit coupon from page 1 of your statement with your payment.



Chase Select Banking Gold MasterCard®  
ACCOUNT NUMBER: 5263 2710 0928 1872

Your charges and credits at a glance:

TRAN. DATE	POST DATE	REF. NO.	DESCRIPTION OF TRANSACTIONS	CREDITS	CHARGES
12/07	12/07	HE6L	STARBUCKS 0831 32NDQ48 NEW YORK NY		7.31
12/07	12/07	9BZZ	FOOD EMPORIUM #767 S1S NEW YORK CITY NY		10.88
12/07	12/07	M7E1	SAM'S NOODLE SHOP NEW YORK NY		14.00
12/08	12/08	P82W	URBAN-OUTFITTERS #0031 NEW YORK NY		10.83
12/09	12/09	PS9G	DUANE READE #197 NEW YORK NY		5.90
12/09	12/09	S006	GRISTEDES 99 SN3 NEW YORK NY		21.75
12/09	12/09	0KPP	MELISSA BLUE NEW YORK NY		29.12
12/10	12/10	ZE1H	GRISTEDES 99 SN3 NEW YORK NY		19.48
12/10	12/10	4XMY	MEE NOODLE SHOP & GRIL NEW YORK NY		4.90
12/13	12/13	DLY1	DUANE READE #197 NEW YORK NY		28.96
12/14	12/14	T3SJ	RITE AID STORE 4971 MANHATTAN NY		5.28
12/15	12/15	3SRN	FOOD EMPORIUM #767 S1S NEW YORK CITY NY		34.25
12/16	12/16	L0B6	DUANE READE #197 NEW YORK NY		26.68
12/16	12/16	XL24	TSI FITNESS TRNG NEW YORK NY		15.00
12/16	12/16	XTRD	TOMATO BRO8 SZL NEW YORK NY		24.17
12/17	12/17	QBHQ	FOOD EMPORIUM #767 S1S NEW YORK CITY NY		22.19
12/18	12/18	39YN	HAIR PRODUCT OUTLET NORTH HAVEN CT		52.97
12/19	12/19	AN51	FOOD EMPORIUM #767 S1S NEW YORK CITY NY		53.36
12/20	12/20	LV0Z	DUANE READE #197 NEW YORK NY		23.26
12/20	12/20	2EJL	GRISTEDES 99 SN3 NEW YORK NY		38.51
12/21	12/21	3P4D	ON STAGE NEW YORK NY		29.99
12/21	12/21	ZMAQ	QPASS WWW.QPASS.COM 206-694-4425 WA		54.07
12/22	12/22	RPBK	MODELL'S SPTG GOODS 6 NEW YORK NY		31.34
12/22	12/22	5B96	OYSTER BAR RESTAURANT NEW YORK NY		13.89
12/23	12/23	VW2H	CAFE INDULGE NEW YORK NY		10.00
12/24	12/24	Z7FT	JIN GO GAE INC NEW YORK NY		20.00
12/26	12/26	XA73	DUANE READE #197 NEW YORK NY		34.84
12/26	12/26	BMDP	LA BELLA PIZZA OF N.Y. NEW YORK NY		35.83
12/27	12/27	VWGS	GRISTEDES 99 SN3 NEW YORK NY		39.65
12/27	12/27	VW9S	GRISTEDES 99 SN3 NEW YORK NY		9.97
12/28	12/28	8LFF	BORDERS BOOKS & MUSIC#2 NEW YORK NY		164.43
12/29	12/29	7FB9	GRISTEDES 99 SN3 NEW YORK NY		26.24
Total of your credits and charges				3205.58	3222.62

IMPORTANT MESSAGE ABOUT AN IMMEDIATE PHONE PAYMENT FEE. WE MAY IN OUR DISCRETION PERMIT YOU TO MAKE PAYMENTS BY AUTHORIZING US ON YOUR BEHALF TO TRANSFER FUNDS FROM A DEPOSIT OR OTHER ACCOUNT TO YOUR ACCOUNT. FOR EACH SUCH PAYMENT, YOU WILL BE CHARGED AN IMMEDIATE PHONE PAYMENT PROCESSING FEE OF \$12.

Here's how we determined your Finance Charge\*:

	DAILY PERIODIC RATE	AVERAGE DAILY BALANCE	PERIODIC / MIN. FINANCE CHARGE	TOTAL FINANCE CHARGE	NOMINAL ANNUAL PERCENTAGE RATE	ANNUAL PERCENTAGE RATE
Purchases	V 0.03836%	\$0.00	\$0.00	\$0.00	14.00%	0.00%
Cash	V 0.04534%	\$0.00	\$0.00	\$0.00	16.55%	0.00%

\* Please see reverse side for balance computation method and other important information.



Questions about your account? Credit Card lost or stolen? Call Chase Customer Service 24 hours a day, 7 days a week, toll-free, at 1-800-441-7681 or write PO Box 15919, Wilmington, DE 19850-5919. Para Servicio al Cliente en Español: 1-800-545-0464.

1-7081 P-005522 A-004828 5263271009281872 T-X P-A P-FC 02>1



KA-407 CHASE

KA-407 ACCOUNT NUMBER: 5263 2710 0928 1872

KA-407

PAYMENT DUE DATE 02/22/02 NEW BALANCE \$2,588.08 MINIMUM DUE \$51.00

Change your address and telephone number online, log on to www.chase.com/cards or print here:

New Address: Telephone: ( )

D. B KARRON SUITE 4N 300 EAST 33RD STREET NEW YORK NY 10016-9406

Enter Amount Enclosed In Boxes Below \$

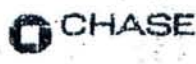
Please make check or money order payable to: CHASE GOLD MASTERCARD. Yes! I want to help protect my credit rating. Please enroll me in the Chase Payment Protector Plan. I have read and understand the enclosed offer. I understand that enrollment is optional and I may cancel at any time.

Signature (DSEKE) P.O. BOX 15836 WILMINGTON DE 19886-5836

5263271009281872002588080000051002

1-29.02

Please detach at perforation and return with your payment.



Chase Select Banking Gold MasterCard ACCOUNT NUMBER: 5263 2710 0928 1872

NEW BALANCE \$2,588.08	PAYMENT DUE DATE 02/22/02	STATEMENT CLOSING DATE 01/29/02	DAYS IN BILLING CYCLE 29
TOTAL CREDIT LINE \$16,500	TOTAL AVAILABLE CREDIT \$13,911	CASH ACCESS LINE \$16,500	AVAILABLE CASH \$13,911

CHASE ULTIMATE REWARDS	FOR ULTIMATE REWARDS CUSTOMER SERVICE: CALL 1-800-243-6533		
	ULTIMATE REWARDS POINTS EARNED THIS MONTH	TOTAL POINTS AVAILABLE FOR REDEMPTION	POINTS EXPIRING ON 12/31/02
	3,508	60,915	7,749

Here is your Account Summary:

	TOTAL
Previous Balance	\$134.62
(-) Payments, Credits	1054.07
(+) Purchases, Cash, Debits	3507.53
(+) FINANCE CHARGES	0.00
(=) New Balance	2588.08
Minimum Payment Due	\$51.00

GET FREE PURCHASE PROTECTION WHEN YOU SHOP! THE CHASE GOLD CARD INSURES YOU AGAINST THEFT OR DAMAGE FOR 30 DAYS AFTER PURCHASE.

Your charges and credits at a glance:

TRAN. DATE	POST DATE	REF. NO.	DESCRIPTION OF TRANSACTIONS	CREDITS	CHARGES
01/10	01/10	GQKP	ATM PAYMENT NY - THANK YOU	500.00	
01/18	01/18	GQKF	ATM PAYMENT NY - THANK YOU	500.00	
01/01	01/01	7WAR	GRISTEDES 99 SN3 NEW YORK NY		65.25
12/29	01/01	2SY4	SAMMACHI JAPANESE REST NEW YORK NY		47.40
01/01	01/01	G0ZS	STATUE OF LIBRTY GIFT NEW YORK NY		3.25
01/01	01/01	G0Z2	STATUE OF LIBRTY GIFT NEW YORK NY		10.25
12/17	01/01	LGKF	ES: NUBOVO-FLORIDA NEW YORK NY		75.00
01/02	01/02	TFMB	GRISTEDES 99 SN3 NEW YORK NY		21.64
01/02	01/02	Z2TP	CCNY BOOKSTORE #593 NEW YORK NY		4.30
01/02	01/02	Z2TZ	CCNY BOOKSTORE #593 NEW YORK NY		70.49
01/03	01/03	S8YD	GRISTEDES 99 SN3 NEW YORK NY		34.74
01/04	01/04	KDLE	FOOD EMPORIUM #767 S1S NEW YORK CITY NY		15.60
01/05	01/05	SW48	FAO SCHWARZ* NEW YORK NY		77.93
01/05	01/05	SZ06	FAO SCHWARZ* NEW YORK NY		20.00
01/06	01/06	7E2Y	DUANE READE #197 NEW YORK NY		03.04
01/08	01/08	M217	FOOD EMPORIUM #767 S1S NEW YORK CITY NY		41.72
01/08	01/08	X2MN	RUBY FRUIT BAR & GRILL NEW YORK NY		19.00
01/09	01/09	Z855	GRISTEDES 99 SN3 NEW YORK NY		9.76
01/10	01/10	81GH	MASA'S NEW YORK NY		10.83
01/10	01/10	E64V	MTA VENDING MACHINE SA 212-METROCARDNY		20.00
01/10	01/10	N003	TEMPORARY CREDIT ADJUSTMENT	54.07	
01/11	01/11	V70J	DUANE READE #197 NEW YORK NY		15.44
01/12	01/12	7AKL	ACME MAKKEIS /948 S11 PRINCETON JUN NJ		17.68
01/12	01/12	P7TW	A & P #640 S1S JERSEY CITY NJ		67.50
01/14	01/14	1KQO	WEE NOODLE SHOP & GRIL NEW YORK NY		23.25





Please enclose remit coupon from page 1 of your statement with your payment.



Chase Select Banking Gold MasterCard®  
ACCOUNT NUMBER: 5263 2710 0928 1872

Your charges and credits at a glance:

TRAN. DATE	POST DATE	REF. NO.	DESCRIPTION OF TRANSACTIONS	CREDITS	CHARGES
01/15	01/15	N8ZP	JIN GO GAE INC NEW YORK NY		17.65
01/16	01/16	3NFS	DUANE READE #197 NEW YORK NY		13.33
01/16	01/16	46QD	CAFE INDULGE NEW YORK NY		18.30
01/16	01/16	BQ7Z	KALUSTYANS NEW YORK NY		21.15
01/17	01/17	PTQ5	DUANE READE #197 NEW YORK NY		11.51
01/17	01/17	YQWV	<del>PATRICIA DAVIA</del>		<del>2112.50</del>
01/18	01/18	Y7PX	GRISTEDES 99 SN3 NEW YORK NY		17.93
01/18	01/18	DW1E	FOOD EMPORIUM #767 S15 NEW YORK CITY NY		8.21
01/18	01/18	LXGY	IEEE COMPTON REGISTRATI WASHINGTON DC	CONFERENCE	300.00
01/19	01/19	4V8R	DUANE READE #197 NEW YORK NY		32.39
01/20	01/20	4VEQ	DUANE READE #197 NEW YORK NY		10.26
01/21	01/21	L5SL	GRISTEDES 99 SN3 NEW YORK NY		18.40
Total of your credits and charges				1054.07	3507.53

ENROLL IN CHASE PAYMENT PROTECTOR PLAN TODAY. THE PLAN THAT HELPS PROTECT YOUR CREDIT RATING.

NOTICE: CREDITS ON YOUR ACCOUNT (SUCH AS REFUNDS FOR STORE PURCHASES) WILL NOT BE APPLIED AS A PAYMENT. PLEASE MAKE AT LEAST YOUR REQUIRED MINIMUM PAYMENT TO AVOID LATE FEES AND OTHER CHARGES.

Here's how we determined your Finance Charge\*:

	DAILY PERIODIC RATE	AVERAGE DAILY BALANCE	PERIODIC / MIN. FINANCE CHARGE	TOTAL FINANCE CHARGE	NOMINAL ANNUAL PERCENTAGE RATE	ANNUAL PERCENTAGE RATE
Purchases	V 0.03767%	\$0.00	\$0.00	\$0.00	13.75%	0.00%
Cash	V 0.04466%	\$0.00	\$0.00	\$0.00	16.30%	0.00%

\* Please see reverse side for balance computation method and other important information.



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CHASE

PAYMENT DUE DATE  
03/25/02

NEW BALANCE  
\$3,509.29

MINIMUM DUE  
\$70.00

Change your address and telephone number online. Log on to [www.chase.com/cards](http://www.chase.com/cards) or print here.

New Address: \_\_\_\_\_  
\_\_\_\_\_  
Telephone: ( ) \_\_\_\_\_

D. B KARRON  
SUITE 4N  
300 EAST 33RD STREET  
NEW YORK NY 10016-9406

002811

ACCOUNT NUMBER: 5263 2710 0928 1872

Enter Amount Enclosed In Boxes Below

\$

Please make check or money order payable to CHASE GOLD MASTERCARD

Yes! I want to help protect my credit rating. Please enroll me in the Chase Payment Protector Plan. I have read and understand the enclosed offer. I understand that enrollment is optional and I may cancel at any time.

Signature \_\_\_\_\_ (D5EKO)

P.O. BOX 15836  
WILMINGTON DE 19886-5836

2.28.02

Please detach at perforation and return with your payment.

526327100928187200350929000070003

CHASE	Chase Select Banking Gold MasterCard®			ACCOUNT NUMBER: 5263 2710 0928 1872	
NEW BALANCE \$3,509.29	PAYMENT DUE DATE 03/25/02	STATEMENT CLOSING DATE 02/28/02	DAYS IN BILLING CYCLE 30	TOTAL CREDIT LINE \$16,500	TOTAL AVAILABLE CREDIT \$12,990
		CASH ACCESS LINE \$16,500	AVAILABLE CASH \$12,990		

	FOR ULTIMATE REWARDS CUSTOMER SERVICE: CALL 1-800-243-6533		
	ULTIMATE REWARDS POINTS EARNED THIS MONTH	TOTAL POINTS AVAILABLE FOR REDEMPTION	POINTS EXPIRING ON 12/31/02
	1,732	62,647	7,749

Here is your Account Summary:

	TOTAL
Previous Balance	\$2588.08
(-) Payments, Credits	900.00
(+) Purchases, Cash, Debits	1785.22
(+) FINANCE CHARGES	35.99
(=) New Balance	3509.29
Minimum Payment Due	\$70.00

ZERO LIABILITY GUARANTEE WHEN  
SHOPPING ONLINE OR DOWN THE  
STREET. AS A VALUED CHASE  
CARDMEMBER, YOU AREN'T LIABLE  
FOR ANY UNAUTHORIZED PURCHASES.

Your charges and credits at a glance:

TRAN. DATE	POST DATE	REF. NO.	DESCRIPTION OF TRANSACTIONS	CREDITS	CHARGES
02/06	02/06	Z76E	PAYMENT THANK YOU	500.00	
02/15	02/15	GQKM	ATM PAYMENT NY - THANK YOU	200.00	
02/21	02/21	GQKN	ATM PAYMENT NY - THANK YOU	200.00	
01/29	01/30	SA12	DUANE READE #197 NEW YORK NY		30.85
01/29	01/30	SA6R	DUANE READE #197 NEW YORK NY		9.40
01/30	01/30	QA1S	DUANE READE #197 NEW YORK NY		24.47
01/30	01/30	Y7EM	TODARO BROS SZL NEW YORK NY		12.52
01/28	01/30	2F5B	TODARO BROS SZL NEW YORK NY		13.12
01/30	01/30	1266	BENJAMIN RESTAURANT AN NEW YORK NY		17.64
01/29	01/30	QAL1	MEE NOODLE SHOP & GRIL NEW YORK NY		8.70
01/28	01/30				166.00
01/31	01/31	N003	TEMPORARY CREDIT REVER SAL	54.07	
02/01	02/01	G1FS	DUANE READE #197 NEW YORK NY	17.87	
02/01	02/01	ZFS2	HARLICK & CO INC SAN CARLOS CA	200.00	
02/03	02/03	1LX0	GRISTEDES 99 SN3 NEW YORK NY		16.43
02/03	02/03	J067	STARBUCKS 0831 32ND048 NEW YORK NY		16.37
02/03	02/03	N1KG	FOOD EMPORIUM #767 S1S NEW YORK CITY NY		39.88
02/03	02/03	F4LX	DUANE READE #197 NEW YORK NY		17.72
02/04	02/04		NY SPORTS CLUB-FIT-C # TEL2123868588 NY		79.00
02/05	02/05	J058	STARBUCKS 0831 32ND048 NEW YORK NY		4.49
02/05	02/05	71IQE	SAM'S NOODLE SHOP NEW YORK NY		13.45
02/06	02/06	SMHG	DUANE READE #197 NEW YORK NY		8.20
02/07	02/07	T01N	RITL AID STORE 49/1 MANHATTAN NY		6.24
02/09	02/09	L814	TRADER JOE'S #00005SM2 OCEANSIDE NY		64.11
02/09	02/09	271T	GRISTEDES 99 SN3 NEW YORK NY		34.69
02/09	02/09	468X	NECTAR RESTAURANT NEW YORK NY		23.05
02/10	02/10	RAVO	DUANE READE #197 NEW YORK NY		21.11
02/11	02/11	A632	GRISTEDES 99 SN3 NEW YORK NY		86.20



KA-410

ACCOUNT NUMBER: 5263 2710 0928 1872  
KA-410 KA-410

PAYMENT DUE DATE 03/25/2002 | NEW BALANCE \$ 3,509.29 | MINIMUM DUE \$70.00

# Facsimile Copy

D. B KARRON  
SUITE 4N  
300 EAST 33RD STREET  
NEW YORK NY 10016-9406



Chase Gold MasterCard  
ACCOUNT NUMBER: 5263 2710 0928 1872

NEW BALANCE \$ 3,509.29	PAYMENT DUE DATE 03/25/2002	TOTAL CREDIT LINE \$16,500	TOTAL AVAILABLE CREDIT \$12,990	STATEMENT CLOSING DATE 02/28/2002
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Here is your Account Summary:

	TOTAL
Previous Balance	\$2,588.08
(-) Payments, Credits	900.00
(+) Purchases, Cash, Debits	1,785.22
(+) FINANCE CHARGES	35.99
(=) New Balance	3,509.29
Minimum Payment Due	\$70.00

Here are your Charges and Credits at a glance:

TRAN. DATE	POST DATE	REF. NO.	DESCRIPTION OF TRANSACTIONS	CREDITS	CHARGES
01/29	01/30	SA12	DUANE READE #197 NEW YORK NY		30.85
01/29	01/30	SA6R	DUANE READE #197 NEW YORK NY		9.40
01/30	01/30	QA1S	DUANE READE #197 NEW YORK NY		24.47
01/28	01/30	Y7EM	TODARO BROS SZL NEW YORK NY		12.52
01/30	01/30	2F5B	TODARO BROS SZL NEW YORK NY		13.12
01/29	01/30	1Z66	BENJAMIN RESTAURANT AN NEW YORK NY		17.64
01/28	01/30	QAL1	MEE NOODLE SHOP & GRIL NEW YORK NY		8.70
01/29	01/30	JEDR	VESPRO OVERLAND PARK KS		109.90
01/31	01/31	N003	TEMPORARY CREDIT REVER SAL		54.07
02/01	02/01	G1FS	DUANE READE #197 NEW YORK NY		17.87
02/01	02/01	ZFS2	HARLICK & CO INC SAN CARLOS CA		200.00
02/03	02/03	1LX0	GRISTEDE'S 99 SN3 NEW YORK NY		16.43
02/03	02/03	J067	STARBUCKS 0831 32NDQ48 NEW YORK NY		16.37
02/03	02/03	N1KG	FOOD EMPORIUM #767 S1S NEW YORK CITY NY		39.88
02/04	02/04	F4LX	DUANE READE #197 NEW YORK NY		17.72
02/04	02/04	8G3Q	NY SPORTS CLUB-FTC-C # TEL2123868598 NY		79.00
02/05	02/05	J0S6	STARBUCKS 0831 32NDQ48 NEW YORK NY		4.49
02/05	02/05	7HQE	SAM'S NOODLE SHOP NEW YORK NY		13.45
02/06	02/06	SMHG	DUANE READE #197 NEW YORK NY		8.20
02/06	02/06	Z76E	PAYMENT THANK YOU	500.00	
02/07	02/07	T0TN	RITE AID STORE 4971 MANHATTAN NY		6.24
02/09	02/09	L8T4	TRADER JOE'S #00005SM2 OCEANSIDE NY		64.11
02/09	02/09	2ZTT	GRISTEDE'S 99 SN3 NEW YORK NY		34.69
02/09	02/09	468X	NECTAR RESTAURANT NEW YORK NY		23.05
02/10	02/10	RAVQ	DUANE READE #197 NEW YORK NY		21.11
02/11	02/11	A532	GRISTEDE'S 99 SN3 NEW YORK NY		86.20
02/12	02/12	Y9PM	MARU MARU SUSHI NEW YORK NY		39.10
02/12	02/12	ZFRY	HARLICK & CO INC SAN CARLOS CA		100.00
02/13	02/13	RRFN	1-800-FLOWERS.COM,INC. 800-468-1141 NY		48.98
02/13	02/13	L8ZW	WMATA CAT#926 WASHINGTON DC		3.20
02/13	02/13	M7E5	WMATA CAT#926 WASHINGTON DC		2.20



02/14	02/14	NBR4	ON STAGE NEW YORK NY		59.98
02/14	02/14	YJYX	DIAMOND'S HALLMARK SHO NEW YORK NY		4.04
02/14	02/14	06WP	MEE NOODLE SHOP & GRIL NEW YORK NY		11.40
02/15	02/15	BXKS	FOOD EMPORIUM #767 S1S NEW YORK CITY NY		22.16
02/15	02/15	GQKM	ATM PAYMENT NY - THANK YOU	200.00	
02/17	02/17	31V7	DUANE READE #197 NEW YORK NY		56.19
02/17	02/17	9BSN	MEE NOODLE SHOP & GRIL NEW YORK NY		8.70
02/19	02/19	K409	DUANE READE #197 NEW YORK NY		26.65
02/19	02/19	3FYB	HAIR PRODUCT OUTLET NORTH HAVEN CT		93.21
02/20	02/20	KDJD	FOOD EMPORIUM #767 S1S NEW YORK CITY NY		9.69
02/21	02/21	T48S	PATRICIA DALIA NEW YORK NY		277.50
02/21	02/21	GQKN	ATM PAYMENT NY - THANK YOU	200.00	
02/24	02/24	N0F1	DUANE READE #197 NEW YORK NY		13.48
02/24	02/24	YPB8	MEE NOODLE SHOP & GRIL NEW YORK NY		17.50
02/24	02/24	0NEL	TODARO BROS. NEW YORK NY		18.24
02/25	02/25	VZJH	TRADER JOE'S #00000SM2 EMERYVILLE CA		43.52
Total of your credits and charges				900.00	1,785.22
ENROLL IN CHASE PAYMENT PROTECTOR PLAN TODAY. THE PLAN THAT HELPS PROTECT YOUR CREDIT RATING. GOOD NEWS! ACCEPT OUR BALANCE TRANSFER OFFER AND YOU MAY BE ELIGIBLE TO REDUCE YOUR DAILY PERIODIC RATE AND YOUR NOMINAL APR TO 0%. THIS MONTH YOU EARNED \$1732.00 ULTIMATE REWARD POINTS. YOU CURRENTLY HAVE \$62647.00 ULTIMATE REWARD POINTS. FOR MORE INFORMATION CALL 1-800-243-6533.					

Here's how we determined your Finance Charge\*: Days in Billing Cycle: 30

	DAILY PERIODIC RATE	AVERAGE DAILY BALANCE	PERIODIC/MIN. FINANCE CHARGE	TOTAL FINANCE CHARGE	NOMINAL ANNUAL PERCENTAGE RATE	ANNUAL PERCENTAGE RATE
Cash	0.04466%	\$0.00	\$0.00	\$0.00	16.30%	0.00%
Purchases	0.03767%	\$3,184.92	\$35.99	\$35.99	13.75%	13.75%

\* Please see reverse side for balance computation method and other important information.

Questions about your account? Credit Card lost or stolen? Call Chase Customer service 24 hours a Day, 7 days a week, toll-free at 1-800-441-7681 or write PO BOX 15919, WILMINGTON, DE 19850-5919. Para Servicio al Cliente en Español: 1-800-545-0464

ACCOUNT NUMBER: 5263 2710 0928 1872

PAYMENT DUE DATE 04/22/02 NEW BALANCE \$2,128.42 MINIMUM DUE \$42.00

Change your address and telephone number online, log on to www.chase.com/cards or print here:

New Address: Telephone: ( )

D. B KARRON SUITE 4N 300 EAST 33RD STREET NEW YORK NY 10016-9406

Enter Amount Enclosed In Boxes Below \$

Please make check or money order payable to: CHASE GOLD MASTERCARD. Yes! I want to help protect my credit rating. Please enroll me in the Chase Payment Protector Plan. I have read and understand the enclosed offer. I understand that enrollment is optional and I may cancel at any time.

Signature (DSEK)

P.O. BOX 15836 WILMINGTON DE 19886-5836

3.28.02

Please detach at perforation and return with your payment.

526327100928187200212842000042005



Chase Select Banking Gold MasterCard® ACCOUNT NUMBER: 5263 2710 0928 1872

NEW BALANCE \$2,128.42	PAYMENT DUE DATE 04/22/02	STATEMENT CLOSING DATE 03/28/02	DAYS IN BILLING CYCLE 28
TOTAL CREDIT LINE \$16,500	TOTAL AVAILABLE CREDIT \$14,371	CASH ACCESS LINE \$16,500	AVAILABLE CASH \$14,371

	FOR ULTIMATE REWARDS CUSTOMER SERVICE: CALL 1-800-243-6533		
	ULTIMATE REWARDS POINTS EARNED THIS MONTH	TOTAL POINTS AVAILABLE FOR REDEMPTION	POINTS EXPIRING ON 12/31/02
	3,304	65,951	7,749

Here is your Account Summary:

	TOTAL
Previous Balance	\$3509.29
(-) Payments, Credits	4684.82
(+) Purchases, Cash, Debits	3303.95
(+) FINANCE CHARGES	0.00
(=) New Balance	2128.42
Minimum Payment Due	\$42.00

ENROLL IN CHASE PAYMENT PROTECTOR PLAN TODAY. THE PLAN THAT HELPS PROTECT YOUR CREDIT RATING.

Your charges and credits at a glance:

TRAN. DATE	POST DATE	REF. NO.	DESCRIPTION OF TRANSACTIONS	CREDITS	CHARGES
03/03	03/03	YK42	PAYMENT THANK YOU	3139.12	
03/10	03/10	YX44	PAYMENT THANK YOU	844.89	
03/13	03/13	GQKJ	ATM PAYMENT NY - THANK YOU	100.00	
03/15	03/15	364C	PAYMENT THANK YOU	100.81	
03/19	03/19	43EQ	PAYMENT THANK YOU	500.00	
02/28	03/01	1ETE	DUANE READE #295 NEW YORK NY		4.49
02/28	03/01	GGPX	FOOD EMPORIUM #767 S15 NEW YORK CITY NY		26.55
03/02	03/02	TZ7Q	GRISTEDES 99 SN3 NEW YORK NY		41.41
03/03	03/03	TFK1	GRISTEDES 99 SN3 NEW YORK NY		18.83
03/03	03/03	TSRL	PARAGON SPORTING NEW YORK NY		248.96
03/04	03/04	Y4JW	NY SPORTS CLUB-FTIC # TEL212388586 NY		79.00
03/04	03/04	AZZS	FOOD EMPORIUM #767 S15 NEW YORK CITY NY		9.50
03/06	03/06	TWQT	DUANE READE #197 NEW YORK NY		36.72
03/06	03/06	Z69T	CAFE INDULGE NEW YORK NY		9.90
03/07	03/07	ZDTL	GRISTEDES 99 SN3 NEW YORK NY		27.14
03/07	03/07	OSJB	GREEN BEANS NEW YORK NY		9.84
03/08	03/08	FY37	GRISTEDES #421 SZL NEW YORK NY		33.61
03/09	03/09	9RAB	GRISTEDES 99 SN3 NEW YORK NY		9.01
03/09	03/09	M8ND	UAMMO BELLO NEW YORK NY		22.85
03/09	03/09	JB7G	STARBUCKS 0831 32NDQ48 NEW YORK NY		3.00
03/09	03/09	TKQ3	SIDS BIKE SHOP NEW YORK NY		135.31
03/09	03/09	JFA3	NIKE #284 NEW YORK NY		29.98
03/09	03/09	J6V5	NIKE #284 NEW YORK NY		80.00
03/10	03/10	FSES	GRISTEDES 99 SN3 NEW YORK NY		17.22
03/10	03/10	KOF1	CRATE & BARREL-621 NEW YORK NY		50.15
03/10	03/10	H74T	GNC #82943 NEW YORK NY		83.37
03/10	03/10	DP8F	TODARO BROS. NEW YORK NY		13.37
03/12	03/12	HS3T	PERFORMANCE FILTERS CINCINNATI OH		173.10



### How We Determine Your Finance Charges

Finance Charges on your Account are determined by applying the applicable Periodic Rates to separate average daily balances and adding any minimum charges and transaction fees that apply. This statement has a "Finance Charge" section. For each type of transaction in the "Finance Charge" section, we calculate an average daily balance (including current transactions) and apply the Periodic Rate shown for that balance.

Here is how we determine each of your average daily balances:

1. For each day in the billing cycle, we take that day's beginning balance for Balance Transfers, Advances and Purchases (an amount that includes accrued and/or unpaid Finance Charges, fees and other charges from previous billing cycles) for the type of average daily balance being calculated (e.g., either Purchases/Cash Advances, Prior and Current Purchases/Cash Advances, and Balance Transfers, or Transferred Balances) and add any new Balance Transfers, Advances, Purchases or other debits to the appropriate balance. If your Account has a daily periodic rate as shown on this statement, then we also add to each such balance an amount equal to the previous day's ending balance of Balance Transfers, Advances, or Purchases multiplied by the applicable daily Periodic Rate (or if more than one rate could apply depending on the average daily balance reaching a certain level, the lowest applicable rate). We then subtract from the appropriate balance any payments or credits posted that day. This gives us the daily balances.

2. We then add the amounts of all the daily balances for the billing cycle (excluding days which end with a credit balance) and divide the sum by the number of days in that billing cycle. This gives us the Average Daily Balance.

If there is a "V" next to the Periodic Rate on this statement, this means that the rate may vary. The variable APR is the prime rate published in *The Wall Street Journal* on the last business day of the calendar month plus your margin as disclosed in your Cardmember Agreement.

If the "Purchases Periodic Rate/FINANCE CHARGE" on this statement is \$0.50, then the minimum Finance Charge for Purchases applies to your Account.

A transaction fee Finance Charge may be imposed on each Cash Advance and Balance Transfer.

#### Purchases Grace Period

There will not be a finance charge on Purchases if we receive payment for the New Balance by 12:00 Noon Eastern Time on the Payment Due Date shown on this statement. You may avoid a finance charge on Purchases for the first billing cycle in which they are posted to your Account if that cycle began with a previous balance of zero or the previous balance is reduced to zero by credits or payments we receive by 12:00 Noon Eastern Time on the Payment Due Date shown on your previous monthly statement. Payments must be in accordance with our payment instructions. The Purchases grace period is not less than 22 days. There is no grace period for Cash Advances, Transferred Balances (for new accounts only) and Balance Transfers (for existing accounts only) unless the terms of the Balance Transfer offer state there will be a grace period. If this is a Premier Advantage Account, there is no grace period in which to repay your balances before Finance Charges will be imposed.

#### When Charges Are Added To Your Average Daily Balance

Purchases, Cash Advances and other debits are added to the daily balance as of the transaction date (in the "Trans. Date" column on your statement) or the first day of the billing cycle, whichever is later. At our option, we may wait until the posting date (in the "Post Date" column on your statement) to add the transaction to the daily balance. The posting date is the date we actually process the transaction to your Account.

#### Making Payments

Send at least your Minimum Payment to the payment address shown on the bottom of the first page of this statement. Your payment must comply with the instructions on this statement and the enclosed envelope, and must be made by check or money order, payable in U.S. Dollars, and drawn on a U.S. financial institution or the U.S. Postal Service. If your payment is in accordance with our payment instructions, and is made available to us at our post office box designated for receipt of payment on your billing statement by 12:00 Noon, Eastern Time, on a business day (each day except Saturdays, Sundays, and holidays), we will credit the payment to your Account as of that day. If your payment is in accordance with our payment instructions, but is made available to us at our post office box designated for receipt of payment on your billing statement after 12:00 Noon, Eastern Time, on a business day, or at any time on a non-business day, we will credit it to your Account as of the next business day. If you do not follow our payment instructions, crediting of your payment may be delayed for up to 5 days. In any case, payments that are not credited as of the date of receipt by us may result in finance or other charges in accordance with the terms of your cardmember agreement with us.

**Conditional Payments.** Any payment check which you send us for less than the full balance due that is marked "paid in full" or contains a similar notation, or that you otherwise tender in full satisfaction of a disputed amount, must be sent to Chase, P.O. Box 29236, Phoenix, AZ 85038-9236. We reserve all our rights regarding such checks. For example, if it is determined there is no valid dispute or if any such check is received at any other address, we may accept the check and you will still owe any remaining balance. We may refuse to accept any such check by returning it to you, not cashing it or destroying it. All other payments should be sent to the payment address shown on this statement.

#### Telecommunication Device for the Deaf

For any questions or other communication about your Account, please call the TDD # 1-800-446-1253.

#### If you see a charge on your statement that you do not recognize:

- Re-check your own records as well as those of any authorized users to see if there is a charge or mail or phone order you may have overlooked. It is a good idea to keep your copy of all charges until those charges appear on your statement.
- Check to see if the amount and date of the charge are familiar, even if you do not recognize the place or the merchant name. Companies may bill under a different name or from a central location.

#### If you still do not recognize the transaction, please refer to the Billing Rights Summary.

New York residents may contact the New York State Banking Department at 1-800-518-4866 to obtain a comparative listing of credit card rates, fees and grace periods.

#### Disputing Account Information Reported to Credit Bureaus

We furnish information about your Account to credit bureaus. You have the right to dispute the accuracy of the information reported by writing to us at P.O. Box 15823, Wilmington, DE 19850-5823.

California residents: As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

#### If Your Annual Fee Is Billed On this Statement

If you close your Account within 30 days from the date this statement was mailed, you may avoid paying the annual fee billed on this statement. You may do this by writing to us at the address or calling us at the telephone number shown on this statement after "Questions?" You may continue using your Account during this 30 day period up to the date you tell us to close your Account.

#### BILLING RIGHTS SUMMARY

##### In Case Of Errors Or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us on a separate sheet at the address shown on this statement next to "Questions?" as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights. In your letter, give us the following information:

1. Your name and Account number.
2. The dollar amount of the suspected error.
3. Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot report you as delinquent or take any action to collect the amount you question.

If you have authorized us to pay your credit card bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment, you must call us at the telephone number shown on this statement after "Questions?" three business days before the automatic payment is scheduled to occur.

##### Special Rule For Credit Card Purchases

If you have a problem with the quality of goods or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may not have to pay the remaining amount due on the goods or services. You have this protection only when the purchase price was more than \$50 and the purchase was made in your home state or within 100 miles of your mailing address. (If we own or operate the merchant, or if we mailed you the advertisement for the property or services, all Purchases are covered regardless of amount or location of purchase.)



Please enclose remit coupon from page 1 of your statement with your payment.



Chase Select Banking Gold MasterCard®  
ACCOUNT NUMBER: 5263 2710 0928 1872

Your charges and credits at a glance:

TRAN. DATE	POST DATE	REF. NO.	DESCRIPTION OF TRANSACTIONS	CREDITS	CHARGES
03/12	03/12	J3H3	FOOD EMPORIUM #787 S1S NEW YORK CITY US		17.01
03/13	03/13	6HD3	GRISTEDES 99 SN3 NEW YORK NY		13.24
03/13	03/13	YQV8	VESPINO OVERLAND PARK KS		100.00
03/13	03/13	Y101	VESPINO OVERLAND PARK KS		55.94
03/14	03/14	H2AT	RADIO SHACK 00127530 LONG BEACH NY		32.54
03/14	03/14	Q2SA	TRADER JOE'S #00006SM2 OCEANSIDE NY		24.35
03/14	03/14	XNXL	DUANE READE #197 NEW YORK NY		25.39
03/14	03/14	B6J8	HERTZ RENT-A-CAR NEW YORK NY		79.17
03/15	03/15	7T8F	FOOD EMPORIUM #787 S1S NEW YORK CITY US		6.16
03/16	03/16	VN8W	LA BELLA PIZZA OF N.Y. NEW YORK NY		14.91
03/16	03/16	V77S	SIDS BIKE SHOP NEW YORK US		300.00
03/17	03/17	YS74	MEE NOODLE SHOP & GRIL NEW YORK NY		18.66
03/17	03/17	0NV3	TODARO BROS. SZL NEW YORK NY		9.37
03/18	03/18	0AJ5	GRISTEDES 99 SN3 NEW YORK NY		26.58
03/20	03/20	AXFK	DUANE READE #197 NEW YORK NY		26.44
03/20	03/20	0MY8	TODARO BROS. SZL NEW YORK NY		10.48
03/21	03/21	2AV6	QPASS WWW.QPASS.COM 206-694-4425 WA		19.95
03/21	03/21	ZFSK	HARLUK & CO INC SAN CARLOS CA		536.95
03/21	03/21	ZFSV	HARLUK & CO INC SAN CARLOS CA		578.30
03/21	03/21	HHG7	KIPS BAY OPTICAL LTD NEW YORK NY		100.00
03/21	03/21	GHTH	FOOD EMPORIUM #787 S1S NEW YORK CITY US		35.81
03/22	03/22	KM7S	DUANE READE #197 NEW YORK NY		10.74
03/22	03/22	RP7F	GRISTEDES 99 SN3 NEW YORK NY		30.06
03/24	03/24	NDF4	GRISTEDES 99 SN3 NEW YORK NY		26.73
03/24	03/24	JGZK	STARBUCKS 0831 32NDQ48 NEW YORK NY		8.74
03/25	03/25	F1FZ	DUANE READE #197 NEW YORK NY		11.60
03/26	03/26	3XEQ	GRISTEDES 99 SN3 NEW YORK NY		11.54
Total of your credits and charges				4684.82	3303.95

IMPORTANT: PLEASE READ ENCLOSED INSERT FOR NEW ARBTRATION AGREEMENT AND OTHER CHANGES TO YOUR ACCOUNT TERMS.  
YOUR CHASE GOLD CARD DELIVERS BENEFITS YOU CAN USE. VISIT [WWW.CHASE.COM/CARDBENEFITS](http://WWW.CHASE.COM/CARDBENEFITS) TO GET DETAILS ON YOUR VALUABLE BENEFITS.

Here's how we determined your Finance Charge\*:

	DAILY PERIODIC RATE	AVERAGE DAILY BALANCE	PERIODIC / MIN. FINANCE CHARGE	TOTAL FINANCE CHARGE	NOMINAL ANNUAL PERCENTAGE RATE	ANNUAL PERCENTAGE RATE
Purchases	V 0.03767%	\$0.00	\$0.00	\$0.00	13.75%	0.00%
Cash	V 0.04466%	\$0.00	\$0.00	\$0.00	18.30%	0.00%

\* Please see reverse side for balance computation method and other important information.



Questions about your account? Credit Card lost or stolen? Call Chase Customer Service 24 hours a day, 7 days a week, toll-free, at 1-800-441-7681 or write PO Box 15919, Wilmington, DE 19850-5919. Para Servicio al Cliente en Español: 1-800-545-0454.

### How We Determine Your Finance Charges

Finance Charges on your Account are determined by applying the applicable Periodic Rates to separate average daily balances and adding any minimum charges and transaction fees that apply. This statement has a "Finance Charge" section. For each type of transaction in the "Finance Charge" section, we calculate an average daily balance (including current transactions) and apply the Periodic Rate shown for that balance.

Here is how we determine each of your average daily balances:

1. For each day in the billing cycle, we take that day's beginning balance for Balance Transfers, Advances and Purchases (an amount that includes accrued and/or unpaid Finance Charges, fees and other charges from previous billing cycles) for the type of average daily balance being calculated (e.g., either Purchases/Cash Advances, Prior and Current Purchases/Cash Advances, and Balance Transfers, or Transferred Balances) and add any new Balance Transfers, Advances, Purchases or other debits to the appropriate balance. If your Account has a daily periodic rate as shown on this statement, then we also add to each such balance an amount equal to the previous day's ending balance of Balance Transfers, Advances, or Purchases multiplied by the applicable daily Periodic Rate (or if more than one rate could apply depending on the average daily balance reaching a certain level, the lowest applicable rate). We then subtract from the appropriate balance any payments or credits posted that day. This gives us the daily balances.

2. We then add the amounts of all the daily balances for the billing cycle (excluding days which end with a credit balance) and divide the sum by the number of days in that billing cycle. This gives us the Average Daily Balance.

If there is a "V" next to the Periodic Rate on this statement, this means that the rate may vary. The variable APR is the prime rate published in *The Wall Street Journal* on the last business day of the calendar month plus your margin as disclosed in your Cardmember Agreement.

If the "Purchases Periodic/Min FINANCE CHARGE" on this statement is \$0.50, then the minimum Finance Charge for Purchases applies in your Account.

A transaction fee Finance Charge may be imposed on each Cash Advance and Balance Transfer.

### Purchases Grace Period

There will not be a finance charge on Purchases if we receive payment for the New Balance by 12:00 Noon Eastern Time on the Payment Due Date shown on this statement. You may avoid a finance charge on Purchases for the first billing cycle in which they are posted to your Account if that cycle began with a previous balance of zero or the previous balance is reduced to zero by credits or payments we receive by 12:00 Noon Eastern Time on the Payment Due Date shown on your previous monthly statement. Payments must be in accordance with our payment instructions. The Purchases grace period is not less than 22 days. There is no grace period for Cash Advances, Transferred Balances (for new accounts only) and Balance Transfers (for existing accounts only) unless the terms of the Balance Transfer offer state there will be a grace period. If this is a Premier Advantage Account, there is no grace period in which to repay your balances before Finance Charges will be imposed.

### When Charges Are Added To Your Average Daily Balance

Purchases, Cash Advances and other debits are added to the daily balance as of the transaction date (in the "Tran. Date" column on your statement) or the first day of the billing cycle, whichever is later. At our option, we may wait until the posting date (in the "Post Date" column on your statement) to add the transaction to the daily balance. The posting date is the date we actually process the transaction in your Account.

### Making Payments

Send at least your Minimum Payment to the payment address shown on the bottom of the first page of this statement. Your payment must comply with the instructions on this statement and the enclosed envelope, and must be made by check or money order, payable in U.S. Dollars, and drawn on a U.S. financial institution or the U.S. Postal Service. If your payment is in accordance with our payment instructions, and is made available to us at our post office box designated for receipt of payment on your billing statement by 12:00 Noon, Eastern Time, on a business day (each day except Saturdays, Sundays, and holidays), we will credit the payment to your Account as of that day. If your payment is in accordance with our payment instructions, but is made available to us at our post office box designated for receipt of payment on your billing statement after 12:00 Noon, Eastern Time, on a business day, or at any time on a non-business day we will credit it to your Account as of the next business day. If you do not follow our payment instructions, crediting of your payment may be delayed for up to 5 days. In any case, payments that are not credited as of the date of receipt by us may result in finance or other charges in accordance with the terms of your cardmember agreement with us.

**Conditional Payments:** Any payment check which you send us for less than the full balance due that is marked "paid in full" or contains a similar notation, or that you otherwise tender in full satisfaction of a disputed amount, must be sent to Chase, P.O. Box 29236, Phoenix, AZ 85034-9236. We reserve all our rights regarding such checks. For example, if it is determined there is no valid dispute or if any such check is received at any other address, we may accept the check and you will still owe any remaining balance. We may refuse to accept any such check by returning it to you, not cashing it or destroying it. All other payments should be sent to the payment address shown on this statement.

### Telecommunication Device for the Deaf

For any questions or other communication about your Account, please call the TDD # 1-800-446-1253.

### If you see a charge on your statement that you do not recognize:

- Re-check your own records as well as those of any authorized users to see if there is a charge or mail or phone order you may have overlooked. It is a good idea to keep your copy of all charges until those charges appear on your statement.
- Check to see if the amount and date of the charge are familiar, even if you do not recognize the place or the merchant name. Companies may bill under a different name or from a central location.

If you still do not recognize the transaction, please refer to the Billing Rights Summary.

New York residents may contact the New York State Banking Department at 1-800-518-8866 to obtain a comparative listing of credit card rates, fees and grace periods.

### Disputing Account Information Reported to Credit Bureaus

We furnish information about your Account to credit bureaus. You have the right to dispute the accuracy of the information reported by writing to us at P.O. Box 15823, Wilmington, DE 19850-5823.

California residents: As required by law, you are hereby notified that a negative credit report reflecting on your credit record may be submitted to a credit reporting agency if you fail to fulfill the terms of your credit obligations.

### If Your Annual Fee Is Billed On this Statement

If you close your Account within 30 days from the date this statement was mailed, you may avoid paying the annual fee billed on this statement. You may do this by writing to us at the address or calling us at the telephone number shown on this statement after "Questions?". You may continue using your Account during this 30 day period up to the date you tell us to close your Account.

### BILLING RIGHTS SUMMARY

#### In Case Of Errors Or Questions About Your Bill

If you think your bill is wrong, or if you need more information about a transaction on your bill, write us on a separate sheet at the address shown on this statement next to "Questions?" as soon as possible. We must hear from you no later than 60 days after we sent you the first bill on which the error or problem appeared. You can telephone us, but doing so will not preserve your rights. In your letter, give us the following information:

1. Your name and Account number.
2. The dollar amount of the suspected error.
3. Describe the error and explain, if you can, why you believe there is an error. If you need more information, describe the item you are unsure about.

You do not have to pay any amount in question while we are investigating, but you are still obligated to pay the parts of your bill that are not in question. While we investigate your question, we cannot report you as delinquent or take any action to collect the amount you question.

If you have authorized us to pay your credit card bill automatically from your savings or checking account, you can stop the payment on any amount you think is wrong. To stop the payment, you must call us at the telephone number shown on this statement after "Questions?" three business days before the automatic payment is scheduled to occur.

#### Special Rule For Credit Card Purchases

If you have a problem with the quality of goods or services that you purchased with a credit card, and you have tried in good faith to correct the problem with the merchant, you may not have to pay the remaining amount due on the goods or services. You have this protection only when the purchase price was more than \$50 and the purchase was made in your home state or within 100 miles of your mailing address. (If we own or operate the merchant, or if we mailed you the advertisement for the property or services, all Purchases are covered regardless of amount or location of purchase.)

# When the economic news is bad...

It can get worse for you and your family.

*"The average length of time a person is unemployed before landing their next job is between 6 and 8 months."*

The U.S. Department of Labor Report



Protect your credit rating against involuntary unemployment, hospitalization, disability or unpaid leave of absence.



## Chase Payment Protector helps you protect your finances

### SUSPEND YOUR CHASE CREDIT CARD PAYMENT

The optional Chase Payment Protector Plan works when you, an Authorized User on your Account or a Higher Wage Earner in your household, cannot. Your payments may be deferred for up to 24 months,\* and your credit rating will be protected in case of:

- Involuntary unemployment
- Hospitalization or disability
- Unpaid leave of absence
- Death (of Authorized User or Higher Wage Earner)

### PROTECT YOUR CREDIT RATING

During difficult times, your Chase Credit Card payments will be suspended and credit bureaus will not receive any negative reports regarding your Account. The cost is only 69¢ per \$100 of your monthly statement balance, and will be conveniently billed to your Chase Credit Card. When you do not have a balance, there is no charge.

### PAY NO INTEREST OR LATE FEES

You are eligible for benefits after 30 days of enrollment. When you activate your benefits, no finance charges or fees will be billed to your Account. While your payments are suspended, you may not use your Chase Credit Card.

### 30-DAY MONEY-BACK GUARANTEE

After you enroll, you will receive an Amendment to Cardmember Agreement with complete details about the Plan. If you are not completely satisfied, you will have 30 days to cancel and receive a full refund of any Plan fees paid. Of course, you may cancel at any time.

FOR MORE INFORMATION call 1-877-752-8572, weekdays 8am to 10pm, Saturday 10am to 5pm, ET.

**Yes! I want to protect my credit rating.**



**Here's how to enroll:**

- Find the signature line in the upper right corner of your billing statement
- Add your signature as shown in the example below

*This valuable plan is NOT automatic.*

#### EXAMPLE

ACCOUNT NUMBER: 1234 5678 9012 3456

Enter Amount Enclosed in Boxes Below

\$

I had I want to help protect my credit rating. Please credit me in the Chase Payment Protector Plan. I have read and understand the enclosed offer. I understand that enrollment is optional and I may cancel at any time.

*Jane Smith*

**Protect your good credit rating with Chase Payment Protector—the sure way to get through uncertain times.**

\*Please note that there are important eligibility requirements you must meet and exclusions that are not covered under the Plan. If you are self-employed, retired or work part-time, you may only be eligible for hospitalization, disability and death benefits. Please review the Amendment to Cardmember Agreement carefully. This product is not required to obtain credit and your decision whether to purchase this product is not a factor in Chase's credit approval.

S1N37032





1:36 PM

09/08/03  
Accrual BasisDEFENDANT'S  
EXHIBIT

222-1

CASI TITIES  
Transactions by Account  
As of December 31, 2003Mastercard per Dr  
10/01/01 - 12/31/03

KA-417

Type	Date	Num	Na...	Memo	Class	Clr	Split	Debit	Credit	Balance
2900 · Payable to DBK										5,207.01
2914 · MC 5263-2710-0928-1872										5,207.01
Transfer	10/30/2001						1080 · Masterc...		7,566.66	12,773.67
Transfer	11/22/2001						1080 · Masterc...		1,975.41	14,749.08
Transfer	12/31/2001						1080 · Masterc...		3,222.62	17,971.70
General Journal	12/31/2001	MC DBK		MC BIKE SHOP	DBK		6013 · Gas	37.86		17,933.84
General Journal	12/31/2001	MC DBK		MC CASH ADVANCE	DBK		6013 · Gas	2,000.00		15,933.84
General Journal	12/31/2001	MC DBK		MC CLOTHING	DBK		6013 · Gas	217.05		15,716.79
General Journal	12/31/2001	MC DBK		MC DONATION	DBK		6013 · Gas	12.00		15,704.79
General Journal	12/31/2001	MC DBK		MC GROCERIES	DBK		6013 · Gas	1,034.49		14,670.30
General Journal	12/31/2001	MC DBK		MC OUTDOOR SPORTS	DBK		6013 · Gas	13.89		14,656.41
General Journal	12/31/2001	MC DBK		MC HOUSEHOLD	DBK		6013 · Gas	516.03		14,140.38
General Journal	12/31/2001	MC DBK		MC PERSONAL	DBK		6013 · Gas	1,751.00		12,389.38
Transfer	1/29/2002						1080 · Masterc...		3,507.53	15,896.91
Transfer	2/28/2002						1080 · Masterc...		1,785.22	17,682.13
Transfer	3/28/2002						1080 · Masterc...		3,303.95	20,986.08
Transfer	4/26/2002						1080 · Masterc...		3,962.10	24,948.18
Transfer	5/29/2002						1080 · Masterc...		1,311.07	26,259.25
General Journal	5/31/2002	MC DBK		MC CLOTHING	DBK		6011 · Auto Re...	614.52		25,644.73
General Journal	5/31/2002	MC DBK		MC GROC	DBK		6011 · Auto Re...	1,899.09		23,745.64
General Journal	5/31/2002	MC DBK		MC HOUSEHOLD	DBK		6011 · Auto Re...	658.08		23,087.56
General Journal	5/31/2002	MC DBK		MC PERSONAL	DBK		6011 · Auto Re...	2,895.52		20,192.04
General Journal	5/31/2002	MC DBK		MC QUESTION	DBK		6011 · Auto Re...	54.19		20,137.85
Transfer	6/28/2002						1080 · Masterc...		5,231.64	25,369.49
Transfer	7/30/2002						1080 · Masterc...		3,722.58	29,092.07
Transfer	8/29/2002						1080 · Masterc...		6,669.95	35,762.02
General Journal	8/31/2002	MC DBK		MC CLOTHING	DBK		6019 · Books	361.85		35,400.17
General Journal	8/31/2002	MC DBK		MC GROCERIES	DBK		6019 · Books	1,024.90		34,375.27
General Journal	8/31/2002	MC DBK		MC HOUSEHOLD	DBK		6019 · Books	374.91		34,000.36
General Journal	8/31/2002	MC DBK		MC PERSONAL	DBK		6019 · Books	2,873.33		31,127.03
General Journal	8/31/2002	MC DBK		MC QUESTION	DBK		6019 · Books	30.00		31,097.03
Transfer	9/30/2002						1080 · Masterc...		5,702.08	36,799.11
Transfer	10/29/2002						1080 · Masterc...		3,857.79	40,656.90
Transfer	11/29/2002						1080 · Masterc...		1,197.80	41,854.70
Transfer	12/30/2002						1080 · Masterc...		1,379.09	43,233.79
General Journal	12/31/2002	MC DBK		MC CLOTHING	DBK		6019 · Books	301.84		42,931.95
General Journal	12/31/2002	MC DBK		MC GROCERIES	DBK		6019 · Books	1,707.83		41,224.12
General Journal	12/31/2002	MC DBK		MC HOUSEHOLD	DBK		6019 · Books	410.92		40,813.20
General Journal	12/31/2002	MC DBK		MC PERSONAL	DBK		6019 · Books	4,762.51		36,050.69
General Journal	12/31/2002	MC DBK		MC PERSONAL	DBK		6019 · Books	1,239.32		34,811.37
General Journal	12/31/2002	MC DBK		MC PERSONAL	DBK		6019 · Books	154.79		34,656.58
General Journal	1/29/2003	MC DBK		MC DBK CLEANERS	DBK		6019 · Books	12.00		34,644.58
General Journal	1/29/2003	MC DBK		MC DS ADVOCATE	DBK		6019 · Books	44.00		34,600.58
General Journal	1/29/2003	MC DBK		MC FIN CHG PERSONAL	DBK		6019 · Books	23.09		34,577.49
General Journal	1/29/2003	MC DBK		MC GROC FOOD EMPORIUM	DBK		6019 · Books	15.38		34,562.11
General Journal	1/29/2003	MC DBK		MC GROC GRISTEDE'S	DBK		6019 · Books	66.19		34,495.92
General Journal	1/29/2003	MC DBK		MC GROC TODARO	DBK		6019 · Books	79.95		34,415.97
General Journal	1/29/2003	MC DBK		MC DBK F SMITH CULLIGAN	DBK		6019 · Books	5,304.25		29,111.72
Transfer	1/31/2003			MC 01/31/03			1080 · Masterc...		7,404.04	36,515.76
Transfer	2/28/2003			MC 02/28/03			1080 · Masterc...		3,305.96	39,821.72
General Journal	2/28/2003	MC DBK		MC DBK CLEANERS	DBK		6130 · Office	12.00		39,809.72
General Journal	2/28/2003	MC DBK		MC FIN CHG PERSONAL	DBK		6130 · Office	66.56		39,743.16
General Journal	2/28/2003	MC DBK		MC GROC ACME PRINCETON	DBK		6130 · Office	19.73		39,723.43
General Journal	2/28/2003	MC DBK		MC GROC FOOD EMPORIUM	DBK		6130 · Office	145.62		39,577.81
General Journal	2/28/2003	MC DBK		MC GROC GRISTEDE'S	DBK		6130 · Office	54.11		39,523.70
General Journal	2/28/2003	MC DBK		MC GROC TODARO'S	DBK		6130 · Office	20.09		39,503.61

# CASI TITIES

## Transactions by Account

As of December 31, 2003

KA-418

KA-418  
06/08/08  
Accrual Basis

Type	Date	Num	Na...	Memo	Class	Clr	Split	Debit	Credit	Balance
General Journal	2/28/2003	MC DBK		MC GROC WALDBAUM'S	DBK		6130 · Office	68.16		39,435.45
Transfer	3/31/2003			MC 03/31/03			1080 · Masterc...		4,350.88	43,786.33
General Journal	3/31/2003	MC DBK		MC DBK CLOTHES ACCESS PLACE	DBK		6130 · Office	18.52		43,767.81
General Journal	3/31/2003	MC DBK		MC DBL MARTY'S SHOES	DBK		6130 · Office	61.65		43,706.16
General Journal	3/31/2003	MC DBK		MC FIN CHG PERSONAL	DBK		6130 · Office	9.80		43,696.36
General Journal	3/31/2003	MC DBK		MC GROC FOOD EMPORIUM	DBK		6130 · Office	121.07		43,575.29
General Journal	3/31/2003	MC DBK		MC GROC GREEN BEANS	DBK		6130 · Office	10.04		43,565.25
General Journal	3/31/2003	MC DBK		MC GROC GRISTEDE'S	DBK		6130 · Office	89.42		43,475.83
General Journal	3/31/2003	MC DBK		MC GROC SHOP RITE	DBK		6130 · Office	99.03		43,376.80
General Journal	3/31/2003	MC DBK		MC GROC TODARO'S	DBK		6130 · Office	51.48		43,325.32
General Journal	3/31/2003	MC DBK		MC DBK HILTON PHILA	DBK		6130 · Office	425.29		42,900.03
General Journal	3/31/2003	MC DBK		MC DBK SID'S BIKE SHOP	DBK		6130 · Office	372.25		42,527.78
Transfer	4/29/2003			MC 04/29/03			1080 · Masterc...		1,772.66	44,300.44
General Journal	4/30/2003	MC DBK		MC DBK HARRY'S AUTO	DBK		-SPLIT-	161.18		44,139.26
General Journal	4/30/2003	MC DBK		MC DBK CLEANERS	DBK		2914 · MC 526...	113.50		44,025.76
General Journal	4/30/2003	MC DBK		MC FIN CHG PERSONAL	DBK		2914 · MC 526...	18.29		44,007.47
General Journal	4/30/2003	MC DBK		MC GROC FOOD EMPORIUM	DBK		2914 · MC 526...	47.09		43,960.38
General Journal	4/30/2003	MC DBK		MC GROC GRISTEDE'S	DBK		2914 · MC 526...	142.60		43,817.78
General Journal	4/30/2003	MC DBK		MC GROC SHOP RITE	DBK		2914 · MC 526...	71.68		43,746.10
General Journal	4/30/2003	MC DBK		MC GROC TODARO'S	DBK		2914 · MC 526...	20.28		43,725.82
General Journal	4/30/2003	MC DBK		MC GROC WILD EDIBLES	DBK		2914 · MC 526...	8.61		43,717.21
General Journal	4/30/2003	MC DBK		MC DBK SID'S BIKE SHOP	DBK		2914 · MC 526...	81.19		43,636.02
General Journal	4/30/2003	MC DBK		MC DBK HAIR DESIGN	DBK		2914 · MC 526...	15.00		43,621.02
General Journal	4/30/2003	MC DBK		MC DBK WINDSOR WINE SHOP	DBK		2914 · MC 526...	44.34		43,576.68
General Journal	4/30/2003	MC DBK		MC CM	DBK		2914 · MC 526...	3.57		43,573.11
Transfer	5/29/2003			MC 05/29/03			1080 · Masterc...		1,674.47	45,247.58
General Journal	5/30/2003	MC DBK		MC CLOTHES	DBK		6019 · Books	17.00		45,230.58
General Journal	5/30/2003	MC DBK		MC CLOTHES K MART	DBK		6019 · Books	370.91		44,859.67
General Journal	5/30/2003	MC DBK		MC GROC ASSOC	DBK		6019 · Books	27.00		44,832.67
General Journal	5/30/2003	MC DBK		MC GROC FOOD EMPORIUM	DBK		6019 · Books	25.15		44,807.52
General Journal	5/30/2003	MC DBK		MC GROC GRISTEDE'S	DBK		6019 · Books	184.03		44,623.49
General Journal	5/30/2003	MC DBK		MC GROC SHOP RITE	DBK		6019 · Books	37.71		44,585.78
General Journal	5/30/2003	MC DBK		MC GROC STEW LEONARD'S	DBK		6019 · Books	179.61		44,406.17
General Journal	5/30/2003	MC DBK		MC GROC WALDBAUM'S	DBK		6019 · Books	26.64		44,379.53
General Journal	5/30/2003	MC DBK		MC DBK FOLICA	DBK		6019 · Books	99.95		44,279.58
General Journal	5/30/2003	MC DBK		MC HAIR PRODUCTS	DBK		6019 · Books	45.07		44,234.51
Transfer	6/28/2003			MC 6/28/03			1080 · Masterc...		1,159.23	45,393.74
General Journal	6/30/2003	MC DBK		MC DBK CLEANERS	DBK		6130 · Office	89.75		45,303.99
General Journal	6/30/2003	MC DBK		MC CLOTHES CENTURY 21	DBK		6130 · Office	235.55		45,068.44
General Journal	6/30/2003	MC DBK		MC GROC FOOD EMPORIUM	DBK		6130 · Office	40.95		45,027.49
General Journal	6/30/2003	MC DBK		MC GROC GRISTEDE'S	DBK		6130 · Office	102.46		44,925.03
General Journal	6/30/2003	MC DBK		MC GROC PATHMARK	DBK		6130 · Office	50.13		44,874.90
General Journal	6/30/2003	MC DBK		MC GROC TODARO	DBK		6130 · Office	13.33		44,861.57
General Journal	6/30/2003	MC DBK		MC DBK GENDERPAC PAC	DBK		6130 · Office	100.00		44,761.57
General Journal	6/30/2003	MC DBK		MC DBK Y AND N ENTERPRISES	DBK		6130 · Office	24.00		44,737.57
Transfer	7/29/2003			MC 07/29/03			1080 · Masterc...		1,373.79	46,111.36
General Journal	7/30/2003	MC DBK		MC DBK CLOTHES ANN TAYLOR	DBK		6130 · Office	27.15		46,084.21
General Journal	7/30/2003	MC DBK		MC GROC A & P	DBK		6130 · Office	40.13		46,044.08
General Journal	7/30/2003	MC DBK		MC GROC FOOD EMPORIUM	DBK		6130 · Office	10.99		46,033.09
General Journal	7/30/2003	MC DBK		MC GROC GRISTEDE'S	DBK		6130 · Office	28.68		46,004.41
General Journal	7/30/2003	MC DBK		MC GROC KALUSTYANS	DBK		6130 · Office	16.76		45,987.65
General Journal	7/30/2003	MC DBK		MC GROC NORTHVILLE MKT	DBK		6130 · Office	15.85		45,971.80
General Journal	7/30/2003	MC DBK		MC GROC SHOP RITE	DBK		6130 · Office	73.89		45,897.91
General Journal	7/30/2003	MC DBK		MC GROC STEW LEONARD'S	DBK		6130 · Office	92.14		45,805.77
General Journal	7/30/2003	MC DBK		MC GROC STOP AND SHOP	DBK		6130 · Office	80.40		45,725.37
General Journal	7/30/2003	MC DBK		MC GROC WALDBAUM'S	DBK		6130 · Office	28.22		45,697.15



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**CASI TITIES**  
**Transactions by Account**  
**As of December 31, 2003**

**KA-419**  
06/08/08  
Accrual Basis

**KA-419**

Type	Date	Num	Na...	Memo	Class	Clr	Split	Debit	Credit	Balance
General Journal	7/30/2003	MC DBK		MC DBK MUSEUM NATL HISTORY	DBK		6130 · Office	44.00		45,653.15
General Journal	7/30/2003	MC DBK		MC DBK M2M MART	DBK		6130 · Office	12.74		45,640.41
Transfer	8/28/2003			MC 08/29/03			1080 · Masterc...		6,763.55	52,403.96
General Journal	8/30/2003	MC DBK		MC CLEANERS	DBK		6130 · Office	23.00		52,380.96
General Journal	8/30/2003	MC DBK		MC FIN CHG PERSONAL	DBK		6130 · Office	16.00		52,364.96
General Journal	8/30/2003	MC DBK		MC GROC ASSOCIATED	DBK		6130 · Office	38.75		52,326.21
General Journal	8/30/2003	MC DBK		MC GROC FOOD EMPORIUM	DBK		6130 · Office	10.17		52,316.04
General Journal	8/30/2003	MC DBK		MC GROC GRISTEDES	DBK		6130 · Office	99.13		52,216.91
General Journal	8/30/2003	MC DBK		MC GROC TODARO'S	DBK		6130 · Office	19.62		52,197.29
General Journal	8/30/2003	MC DBK		MC MEDICAL MEALS MONTREAL	DBK		6130 · Office	129.55		52,067.74
General Journal	8/30/2003	MC DBK		MC DBK AVEDA	DBK		6130 · Office	79.89		51,987.85
General Journal	8/30/2003	MC DBK		MC DBK STEWARTS BALLSTON SPA	DBK		6130 · Office	11.99		51,975.86
General Journal	8/30/2003	MC DBK		MC DBK LOWE'S	DBK		6130 · Office	233.35		51,742.51
Transfer	9/29/2003			MC 09/29/03			1080 · Masterc...		1,568.38	53,310.89
General Journal	9/30/2003	MC DBK		MC GROC BANK ST NATUR	DBK		6130 · Office	31.29		53,279.60
General Journal	9/30/2003	MC DBK		MC GROC BIG Y FOOD	DBK		6130 · Office	54.95		53,224.65
General Journal	9/30/2003	MC DBK		MC GROC GRISTEDES	DBK		6130 · Office	67.09		53,157.56
General Journal	9/30/2003	MC DBK		MC GROC STEW LEONARD'S	DBK		6130 · Office	44.88		53,112.68
General Journal	9/30/2003	MC DBK		MC GROC STOP AND SHOP	DBK		6130 · Office	289.99		52,822.69
General Journal	9/30/2003	MC DBK		MC DBK STEWARTS BALLSTON SPA	DBK		6130 · Office	14.99		52,807.70
General Journal	9/30/2003	MC DBK		MC DBK WALMART	DBK		6130 · Office	97.62		52,710.08
General Journal	9/30/2003	MC DBK		MC DBK HOME DEPOT	DBK		6130 · Office	251.23		52,458.85
General Journal	9/30/2003	MC DBK		MC FIN CHG PERSONAL	DBK		6130 · Office	16.94		52,441.91
Transfer	10/29/2003			MC 10/29/03			1080 · Masterc...		2,456.81	54,898.72
General Journal	10/30/2003	MC DBK		MC DBK AUTO PARTS	DBK		-SPLIT-	5.82		54,892.90
General Journal	10/30/2003	MC DBK		MC CLOTHES CAPE TIP SPORTSWEAR	DBK		2914 · MC 526...	58.42		54,834.48
General Journal	10/30/2003	MC DBK		MC GROC BIG Y FOOD	DBK		2914 · MC 526...	80.87		54,753.61
General Journal	10/30/2003	MC DBK		MC GROC FOOD EMPORIUM	DBK		2914 · MC 526...	74.69		54,678.92
General Journal	10/30/2003	MC DBK		MC GROC GRISTEDES	DBK		2914 · MC 526...	60.95		54,617.97
General Journal	10/30/2003	MC DBK		MC GROC KALUSTYANS	DBK		2914 · MC 526...	35.78		54,582.19
General Journal	10/30/2003	MC DBK		MC GROC STOP AND SGOP	DBK		2914 · MC 526...	77.81		54,504.38
General Journal	10/30/2003	MC DBK		MC GROC TODARO	DBK		2914 · MC 526...	23.74		54,480.64
General Journal	10/30/2003	MC DBK		MC DBK PTOWN BIKES	DBK		2914 · MC 526...	61.80		54,418.84
General Journal	10/30/2003	MC DBK		MC DBK ROOMERS	DBK		2914 · MC 526...	770.00		53,648.84
General Journal	10/30/2003	MC DBK		MC DBK TIFFANY NAILS	DBK		2914 · MC 526...	15.00		53,633.84
General Journal	10/30/2003	MC DBK		MC DBK HOME DEPOT	DBK		2914 · MC 526...	249.20		53,384.64
General Journal	10/30/2003	MC DBK		MC CM TO MC DBK L/T LIAB	LLC		2914 · MC 526...	8.99		53,375.65
General Journal	10/30/2003	MC DBK		MC FIN CHG PERSONAL	DBK		2914 · MC 526...	5.64		53,370.01
General Journal	10/30/2003	MC DBK		mc question	DBK		2914 · MC 526...	109.10		53,260.91
General Journal	10/30/2003	MC DBK		MC DBK CLEANERS	DBK		2914 · MC 526...	41.50		53,219.41
Transfer	11/28/2003			MC 11/28/03			1080 · Masterc...		1,536.98	54,756.39
General Journal	11/30/2003	MC DBK		MC GROC FOOD EMPORIUM	DBK		6130 · Office	31.24		54,725.15
General Journal	11/30/2003	MC DBK		MC GROC GRISTEDES	DBK		6130 · Office	98.86		54,626.29
General Journal	11/30/2003	MC DBK		MC GROC PENNINGTON MARKET	DBK		6130 · Office	21.93		54,604.36
General Journal	11/30/2003	MC DBK		MC GROC STOP AND SHOP	DBK		6130 · Office	42.53		54,561.83
General Journal	11/30/2003	MC DBK		MC GROC TODARO	DBK		6130 · Office	44.74		54,517.09
General Journal	11/30/2003	MC DBK		MC DBK STEWARTS BALLSTON SPA	DBK		6130 · Office	14.84		54,502.25
General Journal	11/30/2003	MC DBK		MC DBK WALMART	DBK		6130 · Office	109.70		54,392.55
General Journal	11/30/2003	MC DBK		MC DBK OLD COUNTRY	DBK		6130 · Office	9.55		54,383.00
Transfer	12/30/2003			MC 12/30/03			1080 · Masterc...		2,352.25	56,735.25
General Journal	12/30/2003	MC DBK		MC DBK ADVANCE AUTO PARTS	DBK		-SPLIT-	65.76		56,669.49
General Journal	12/30/2003	MC DBK		MC DBK HARRY'S AUTO	DBK		2914 · MC 526...	478.96		56,190.53
General Journal	12/30/2003	MC DBK		MC DBK CLEANERS	DBK		2914 · MC 526...	52.25		56,138.28
General Journal	12/30/2003	MC DBK		MC GROC FOOD EMPORIUM	DBK		2914 · MC 526...	158.61		55,979.67
General Journal	12/30/2003	MC DBK		MC GROC GRISTEDES	DBK		2914 · MC 526...	140.37		55,839.30
General Journal	12/30/2003	MC DBK		MC GROC PATHMARK	DBK		2914 · MC 526...	81.29		55,758.01

1:36 PM

**CASITITIES**  
**Transactions by Account**  
 As of December 31, 2003

06/06/08

Accrual Basis

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Type	Date	Num	Na...	Memo	Class	Clr	Split	Debit	Credit	Balance
General Journal	12/30/2003	MC DBK		NY GROC TODARO	DBK		2914 · MC 526...	59.61		55,698.40
General Journal	12/30/2003	MC DBK		MC DBK TIAA LIFE INSUR	DBK		2914 · MC 526...	149.01		55,549.39
General Journal	12/30/2003	MC DBK		MC DBK EMPIRE MOUNTAIN SPORTS	DBK		2914 · MC 526...	287.21		55,262.18
General Journal	12/30/2003	MC DBK		MC DBK HOME DEPOT	DBK		2914 · MC 526...	61.24		55,200.94
General Journal	12/30/2003	MC DBK		MC FIN CHG PERSONAL	DBK		2914 · MC 526...	6.77		55,194.17
General Journal	12/30/2003	MC DBK		MC CM 2003	DBK		2914 · MC 526...	54.07		55,140.10
Total 2914 · MC 5263-2710-0928-1872								40,181.40	90,114.49	55,140.10
Total 2900 · Payable to DBK								40,181.40	90,114.49	55,140.10
<b>TOTAL</b>								<b>40,181.40</b>	<b>90,114.49</b>	<b>55,140.10</b>

STATUTES

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“(ii) help businesses in their States take advantage of the services and information offered by the Regional Centers for the Transfer of Manufacturing Technology created under section 25 of the Act of March 3, 1901 [15 U.S.C. 278k].

“(B) Any State, for itself or for a consortium of States, may submit to the Secretary an application for a cooperative agreement under this subsection, in accordance with procedures established by the Secretary. To qualify for a cooperative agreement under this subsection, a State shall provide adequate assurances that it will increase its spending on technology extension services by an amount at least equal to the amount of Federal assistance.

“(C) In evaluating each application, the Secretary shall consider—

“(i) the number and types of additional businesses that will be assisted under the cooperative agreement;

“(ii) the extent to which the State extension service will demonstrate new methods to increase the use of Federal technology;

“(iii) geographic diversity; and

“(iv) the ability of the State to maintain the extension service after the cooperative agreement has expired.

“(D) States which are party to cooperative agreements under this subsection may provide services directly or may arrange for the provision of any or all of such services by institutions of higher education or other non-profit institutions or organizations.

“(3) In carrying out section 26 of the Act of March 3, 1901 [15 U.S.C. 278j], and this subsection, the Secretary shall coordinate the activities with the Federal Laboratory Consortium; the National Technical Information Service; the National Science Foundation; the Office of Productivity, Technology, and Innovation; the Small Business Administration; and other appropriate Federal agencies.

“(4) There are authorized to be appropriated for the purposes of this subsection \$2,000,000 for each of the fiscal years 1989, 1990, and 1991.

“(c) FEDERAL TECHNOLOGY TRANSFER ACT OF 1986.—Nothing in sections [sic] 25 or 26 of the Act of March 3, 1901 [15 U.S.C. 278k, 278j], or in subsection (b) of this section shall be construed as limiting the authorities contained in the Federal Technology Transfer Act of 1986 (Public Law 99-502) [see Short Title of 1986 Amendments note set out under section 3701 of this title].”

#### SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 272 of this title.

### § 278m. Non-energy inventions program

In conjunction with the initial organization of the Institute, the Director shall establish a program for the evaluation of inventions that are not energy-related to complement but not replace the Energy-Related Inventions Program established under section 5913 of title 42. The Director shall submit an initial implementation plan for this program to accompany the organization plan for the Institute. The implementation plan shall include specific cost estimates, implementation schedules, and mechanisms to help finance the development of technologies the program has determined to have potential. In the preparation of the plan, the Director shall consult with appropriate Federal agencies, including the Small Business Administration and the Department of Energy, State and local government organizations, university officials, and private sector organizations in order to obtain advice on how those agencies and organizations might cooperate with the expansion of this program of the Institute.

(Mar. 3, 1901, ch. 872, §27, as added Pub. L. 100-418, title V, §5121(d), Aug. 23, 1988, 102 Stat. 1437.)

### § 278n. Advanced Technology Program

#### (a) Establishment; purpose; focus; guidance

There is established in the Institute an Advanced Technology Program (hereafter in this chapter referred to as the “Program”) for the purpose of assisting United States businesses in creating and applying the generic technology and research results necessary to—

- (1) commercialize significant new scientific discoveries and technologies rapidly; and
- (2) refine manufacturing technologies.

The Secretary, acting through the Director, shall assure that the Program focuses on improving the competitive position of the United States and its businesses, gives preference to discoveries and to technologies that have great economic potential, and avoids providing undue advantage to specific companies. In operating the Program, the Secretary and Director shall, as appropriate, be guided by the findings and recommendations of the Biennial National Critical Technology Reports prepared pursuant to section 6683<sup>1</sup> of title 42.

#### (b) Authority of Secretary; research and development; contracts and cooperative agreements; Federal laboratories; other activities with joint ventures

Under the Program established in subsection (a) of this section, and consistent with the mission and policies of the Institute, the Secretary, acting through the Director, and subject to subsections (c) and (d) of this section, may—

- (1) aid industry-led United States joint research and development ventures (hereafter in this section referred to as “joint ventures”) (which may also include universities and independent research organizations), including those involving collaborative technology demonstration projects which develop and test prototype equipment and processes, through—

(A) provision of organizational and technical advice; and

(B) participation in such joint ventures by means of grants, cooperative agreements, or contracts, if the Secretary, acting through the Director, determines participation to be appropriate, which may include (i) partial start-up funding, (ii) provision of a minority share of the cost of such joint ventures for up to 5 years, and (iii) making available equipment, facilities, and personnel,

provided that emphasis is placed on areas where the Institute has scientific or technological expertise, on solving generic problems of specific industries, and on making those industries more competitive in world markets;

- (2) provide grants to and enter into contracts and cooperative agreements with United States businesses (especially small businesses), provided that emphasis is placed on applying the Institute's research, research techniques, and expertise to those organizations' research programs;

<sup>1</sup> See References in Text note below.

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(3) involve the Federal laboratories in the Program, where appropriate, using among other authorities the cooperative research and development agreements provided for under section 3710a of this title; and

(4) carry out, in a manner consistent with the provisions of this section, such other cooperative research activities with joint ventures as may be authorized by law or assigned to the Program by the Secretary.

**(c) Authority of Secretary; selection criteria; monitoring use of technologies; overseas transfer; annual report to Congress; financial reporting and auditing; routine consideration of Committee advice; dissemination of research results**

The Secretary, acting through the Director, is authorized to take all actions necessary and appropriate to establish and operate the Program, including—

(1) publishing in the Federal Register draft criteria and, no later than six months after August 23, 1988, following a public comment period, final criteria, for the selection of recipients of assistance under subsection (b)(1) and (2) of this section;

(2) monitoring how technologies developed in its research program are used, and reporting annually to the Congress on the extent of any overseas transfer of these technologies;

(3) establishing procedures regarding financial reporting and auditing to ensure that contracts and awards are used for the purposes specified in this section, are in accordance with sound accounting practices, and are not funding existing or planned research programs that would be conducted in the same time period in the absence of financial assistance under the Program;

(4) assuring that the advice of the Committee established under section 278 of this title is considered routinely in carrying out the responsibilities of the Institute; and

(5) providing for appropriate dissemination of Program research results.

**(d) Contracts or awards; criteria; restrictions**

When entering into contracts or making awards under subsection (b) of this section, the following shall apply:

(1) No contract or award may be made until the research project in question has been subject to a merit review, and has, in the opinion of the reviewers appointed by the Director and the Secretary, acting through the Director, been shown to have scientific and technical merit.

(2) In the case of joint ventures, the Program shall not make an award unless the award will facilitate the formation of a joint venture or the initiation of a new research and development project by an existing joint venture.

(3) No Federal contract or cooperative agreement under subsection (b)(2) of this section shall exceed \$2,000,000 over 3 years, or be for more than 3 years unless a full and complete explanation of such proposed award, including reasons for exceeding these limits, is submitted in writing by the Secretary to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on

Science, Space, and Technology of the House of Representatives. The proposed contract or cooperative agreement may be executed only after 30 calendar days on which both Houses of Congress are in session have elapsed since such submission. Federal funds made available under subsection (b)(2) of this section shall be used only for direct costs and not for indirect costs, profits, or management fees of the contractor.

(4) In determining whether to make an award to a particular joint venture, the Program shall consider whether the members of the joint venture have made provisions for the appropriate participation of small United States businesses in such joint venture.

(5) Section 552 of title 5 shall not apply to the following information obtained by the Federal Government on a confidential basis in connection with the activities of any business or any joint venture receiving funding under the Program—

(A) information on the business operation of any member of the business or joint venture; and

(B) trade secrets possessed by any business or any member of the joint venture.

(6) Intellectual property owned and developed by any business or joint venture receiving funding or by any member of such a joint venture may not be disclosed by any officer or employee of the Federal Government except in accordance with a written agreement between the owner or developer and the Program.

(7) If a business or joint venture fails before the completion of the period for which a contract or award has been made, after all allowable costs have been paid and appropriate audits conducted, the unspent balance of the Federal funds shall be returned by the recipient to the Program.

(8) Upon dissolution of any joint venture or at the time otherwise agreed upon, the Federal Government shall be entitled to a share of the residual assets of the joint venture proportional to the Federal share of the costs of the joint venture as determined by independent audit.

(9) A company shall be eligible to receive financial assistance under this section only if—

(A) the Secretary finds that the company's participation in the Program would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided under this section to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and

(B) either—

(i) the company is a United States-owned company; or

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(ii) the Secretary finds that the company is incorporated in the United States and has a parent company which is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under this chapter; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

(10) Grants, contracts, and cooperative assignments under this section shall be designed to support projects which are high risk and which have the potential for eventual substantial widespread commercial application. In order to receive a grant, contract, or cooperative agreement under this section, a research and development entity shall demonstrate to the Secretary the requisite ability in research and technology development and management in the project area in which the grant, contract, or cooperative agreement is being sought.

(11)(A) Title to any intellectual property arising from assistance provided under this section shall vest in a company or companies incorporated in the United States. The United States may reserve a nonexclusive, non-transferable, irrevocable paid-up license, to have practiced for or on behalf of the United States, in connection with any such intellectual property, but shall not, in the exercise of such license, publicly disclose proprietary information related to the license. Title to any such intellectual property shall not be transferred or passed, except to a company incorporated in the United States, until the expiration of the first patent obtained in connection with such intellectual property.

(B) For purposes of this paragraph, the term “intellectual property” means an invention patentable under title 35 or any patent on such an invention.

(C) Nothing in this paragraph shall be construed to prohibit the licensing to any company of intellectual property rights arising from assistance provided under this section.

**(e) Suspension for failure to satisfy eligibility criteria**

The Secretary may, within 30 days after notice to Congress, suspend a company or joint venture from continued assistance under this section if the Secretary determines that the company, the country of incorporation of the company or a parent company, or the joint venture has failed to satisfy any of the criteria set forth in subsection (d)(9) of this section, and that it is in the national interest of the United States to do so.

**(f) Coordination with other Federal technology programs**

When reviewing private sector requests for awards under the Program, and when monitoring the progress of assisted research projects, the Secretary and the Director shall, as appro-

prate, coordinate with the Secretary of Defense and other senior Federal officials to ensure cooperation and coordination in Federal technology programs and to avoid unnecessary duplication of effort. The Secretary and the Director are authorized to work with the Director of the Office of Science and Technology Policy, the Secretary of Defense, and other appropriate Federal officials to form interagency working groups or special project offices to coordinate Federal technology activities.

**(g) Meetings with industry sources**

In order to analyze the need for the value of joint ventures and other research projects in specific technical fields, to evaluate any proposal made by a joint venture or company requesting the Secretary's assistance, or to monitor the progress of any joint venture or any company research project which receives Federal funds under the Program, the Secretary, the Under Secretary of Commerce for Technology, and the Director may, notwithstanding any other provision of law, meet with such industry sources as they consider useful and appropriate.

**(h) Standards development**

Up to 10 percent of the funds appropriated for carrying out this section may be used for standards development and technical activities by the Institute in support of the purposes of this section.

**(i) Acceptance of funds from other Federal departments and agencies**

In addition to such sums as may be authorized and appropriated to the Secretary and Director to operate the Program, the Secretary and Director also may accept funds from other Federal departments and agencies for the purpose of providing Federal funds to support awards under the Program. Any Program award which is supported with funds which originally came from other Federal departments and agencies shall be selected and carried out according to the provisions of this section.

**(j) Definitions**

As used in this section—

(1) the term “joint venture” means any group of activities, including attempting to make, making, or performing a contract, by two or more persons for the purpose of—

(A) theoretical analysis, experimentation, or systematic study of phenomena or observable facts;

(B) the development or testing of basic engineering techniques;

(C) the extension of investigative finding or theory of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, prototypes, equipment, materials, and processes;

(D) the collection, exchange, and analysis of research information;

(E) the production of any product, process, or service; or

(F) any combination of the purposes specified in subparagraphs (A), (B), (C), (D), and (E),

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and may include the establishment and operation of facilities for the conducting of research, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the results of such venture; and

(2) the term “United States-owned company” means a company that has majority ownership or control by individuals who are citizens of the United States.

(Mar. 3, 1901, ch. 872, §28, as added Pub. L. 100-418, title V, §5131(a), Aug. 23, 1988, 102 Stat. 1439; amended Pub. L. 102-245, title II, §201(c), Feb. 14, 1992, 106 Stat. 16.)

## REFERENCES IN TEXT

Section 6683 of title 42, referred to in subsec. (a), was omitted from the Code.

## AMENDMENTS

1992—Subsec. (a). Pub. L. 102-245, §201(c)(1), inserted at end “In operating the Program, the Secretary and Director shall, as appropriate, be guided by the findings and recommendations of the Biennial National Critical Technology Reports prepared pursuant to section 6683 of title 42.”

Subsec. (b)(1). Pub. L. 102-245, §201(c)(2), inserted “industry-led” after “aid” in introductory provisions.

Subsec. (b)(1)(B). Pub. L. 102-245, §201(c)(3), inserted “by means of grants, cooperative agreements, or contracts” after “such joint ventures”.

Subsec. (b)(2). Pub. L. 102-245, §201(c)(4), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “enter into contracts and cooperative agreements with United States businesses, especially small businesses, and with independent research organizations, provided that emphasis is placed on applying the Institute’s research, research techniques, and expertise to those organizations’ research programs;”.

Subsec. (d)(2). Pub. L. 102-245, §201(c)(5), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “In the case of joint ventures, the Program shall not make an award unless, in the judgment of the Secretary, acting through the Director, Federal aid is needed if the industry in question is to form a joint venture quickly.”

Subsec. (d)(7) to (11). Pub. L. 102-245, §201(c)(6), redesignated pars. (8) and (9) as (7) and (8), respectively, added pars. (9) to (11), and struck out former par. (7) which read as follows: “The Federal Government shall be entitled to a share of the licensing fees and royalty payments made to and retained by any business or joint venture to which it contributes under this section in an amount proportional to the Federal share of the costs incurred by the business or joint venture as determined by independent audit.”

Subsec. (e). Pub. L. 102-245, §201(c)(7), amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: “As used in this section, the term ‘joint research and development venture’ has the meaning given to such term in section 4301(a)(6) of this title.”

Subsecs. (f) to (j). Pub. L. 102-245, §201(c)(8), added subsecs. (f) to (j).

## CHANGE OF NAME

Committee on Science, Space, and Technology of House of Representatives treated as referring to Committee on Science of House of Representatives by section 1(a) of Pub. L. 104-14, set out as a note preceding section 21 of Title 2, The Congress.

## EFFECTIVE DATE OF 1992 AMENDMENT

Section 201(d) of Pub. L. 102-245 provided that: “The amendments in subsection (c) [amending this section] shall take effect immediately upon enactment [Feb. 14,

1992], however, the amendments shall not apply to applications submitted before the date of enactment of this Act.”

CONGRESSIONAL FINDINGS AND PURPOSES FOR  
ADVANCED TECHNOLOGY PROGRAM AMENDMENTS

Section 201(b) of Pub. L. 102-245 provided that:

“(1) The Congress finds that—

“(A) technological innovation and its profitable inclusion in commercial products are critical components of the ability of the United States to raise the living standards of Americans and to compete in world markets;

“(B) maintaining viable United States-based high technology industries is vital to both the national security and the economic well-being of the United States;

“(C) the Department of Commerce has reported that the United States is losing or losing badly, relative to Japan and Europe, in many important emerging technologies and risks losing much of the \$350,000,000,000 United States market and \$1,000,000,000,000 world market expected to develop by the year 2000 for products based on emerging technologies;

“(D) it is in the national interest for the Federal Government to encourage and, in selected cases, provide limited financial assistance to industry-led private sector efforts to increase research and development in economically critical areas of technology;

“(E) joint ventures are a particularly effective and appropriate way to pool resources to conduct research that no single company is likely to undertake but which will create new generic technologies that will benefit an entire industry and the welfare of the Nation;

“(F) it is vital that industry within the United States attain a leadership role and capability in development, design, and manufacturing in fields such as high-resolution information systems, advanced manufacturing, and advanced materials; and

“(G) the Advanced Technology Program, established under section 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278n), is the appropriate vehicle for the United States Government to provide limited assistance to joint development within the United States of new high technology capabilities in fields such as high-resolution information systems, advanced manufacturing technology, and advanced materials, and can help encourage United States industry to work together on problems of mutual concern.

“(2) The purposes of this section [amending this section and section 272 of this title and enacting provisions set out as notes under this section and section 271 of this title] are—

“(A) to strengthen the Advanced Technology Program created under section 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278n), and to provide improved guidelines for the allocation of Advanced Technology Program funds appropriated under the authorizations contained in section 105 of this Act [amending sections 278k and 4632 of this title and provisions set out as a note under section 278l of this title];

“(B) to promote and assist in the development of advanced technologies and the generic application of such technologies to civilian products, processes, and services;

“(C) to improve the competitive position of United States industry by supporting industry-led research and development projects in areas of emerging technology which have substantial potential to advance the economic well-being and national security of the United States, such as high-resolution information systems, advanced manufacturing technology, and advanced materials; and

“(D) to support projects that range from idea exploration to prototype development and address long-term, high-risk areas of technological research, de-



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velopment, and application that are not otherwise being adequately developed by the private sector, but are likely to yield important benefits to the Nation.”

COMPREHENSIVE REPORT ON ADVANCED TECHNOLOGY PROGRAM

Section 201(f) of Pub. L. 102-245 provided that: “The Secretary shall, not later than 4 years after the date of enactment of this Act [Feb. 14, 1992], submit to each House of the Congress and the President a comprehensive report on the results of the Advanced Technology Program established under section 28 of the National Institute of Standards and Technology Act (15 U.S.C. 278n), including any activities in the areas of high-resolution information systems, advanced manufacturing technology, and advanced materials.”

NATIONAL ACADEMIES OF SCIENCES AND ENGINEERING STUDY OF GOVERNMENT-INDUSTRY COOPERATION IN CIVILIAN TECHNOLOGY

Section 5131(c) of Pub. L. 100-418 provided that: “(1) Within 90 days after the date of enactment of this Act [Aug. 23, 1988], the Secretary of Commerce shall enter into contracts with the National Academies of Sciences and Engineering for a thorough review of the various types of arrangements under which the private sector in the United States and the Federal Government cooperate in civilian research and technology transfer, including activities to create or apply generic, nonproprietary technologies. The purpose of the review is to provide the Secretary and Congress with objective information regarding the uses, strengths, and limitations of the various types of cooperative technology arrangements that have been used in the United States. The review is to provide both an analysis of the ways in which these arrangements can help improve the technological performance and international competitiveness of United States industry, and also to provide the Academies’ recommendations regarding ways to improve the effectiveness and efficiency of these types of cooperative arrangements. A special emphasis shall be placed on discussions of these subjects among industry leaders, labor leaders, and officials of the executive branch and Congress. The Secretary is authorized to seek and accept funding for this study from both Federal agencies and private industry.

“(2) The members of the review panel shall be drawn from among industry and labor leaders, entrepreneurs, former government officials with great experience in civilian research and technology, and scientific and technical experts, including experts with experience with Federal laboratories.

“(3) The review shall analyze the strengths and weaknesses of different types of Federal-industry cooperative arrangements in civilian technology, including but not limited to—

“(A) Federal programs which provide technical services and information to United States companies;

“(B) cooperation between Federal laboratories and United States companies, including activities under the Technology Share Program created by Executive Order 12591 [15 U.S.C. 3710 note];

“(C) Federal research and technology transfer arrangements with selected business sectors;

“(D) Federal encouragement of, and assistance to, private joint research and development ventures; and

“(E) such other mechanisms of Federal-industry cooperation as may be identified by the Secretary.

“(4) A report based on the findings and recommendations of the review panel shall be submitted to the Secretary, the President, and Congress within 18 months after the Secretary signs the contracts with the National Academies of Sciences and Engineering.”

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 272, 278 of this title.

§ 278o. User fees

The Institute shall not implement a policy of charging fees with respect to the use of Institute

research facilities by research associates in the absence of express statutory authority to charge such fees.

(Mar. 3, 1901, ch. 872, §30, as added Pub. L. 100-418, title V, §5161, Aug. 23, 1988, 102 Stat. 1450.)

§ 278p. Notice to Congress

(a) Notice of reprogramming

If any funds authorized for carrying out this chapter are subject to a reprogramming action that requires notice to be provided to the Appropriations Committees of the House of Representatives and the Senate, notice of such action shall concurrently be provided to the Committee on Science of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

(b) Notice of reorganization

(1) Requirement

The Secretary shall provide notice to the Committees on Science and Appropriations of the House of Representatives, and the Committees on Commerce, Science, and Transportation and Appropriations of the Senate, not later than 15 days before any major reorganization of any program, project, or activity of the Institute.

(2) “Major reorganization” defined

For purposes of this subsection, the term “major reorganization” means any reorganization of the Institute that involves the reassignment of more than 25 percent of the employees of the Institute.

(Mar. 3, 1901, ch. 872, §31, as added Pub. L. 105-309, §4(b), Oct. 30, 1998, 112 Stat. 2935.)

§ 279. Absence of Director

In the case of the absence of the Director of the National Institute of Standards and Technology the Secretary of Commerce may designate some officer of said Institute to perform the duties of the director during his absence.

(Mar. 4, 1911, ch. 237, §1, 36 Stat. 1231; Mar. 4, 1913, ch. 141, §1, 37 Stat. 736; Pub. L. 100-418, title V, §5115(c), Aug. 23, 1988, 102 Stat. 1433.)

CODIFICATION

Section was not enacted as part of the National Institute of Standards and Technology Act which comprises this chapter.

AMENDMENTS

1988—Pub. L. 100-418 substituted “National Institute of Standards and Technology” for “Bureau of Standards” and “Institute” for “bureau”.

CHANGE OF NAME

Act Mar. 4, 1913, substituted “Secretary of Commerce” for “Secretary of Commerce and Labor”.

§§ 280, 281. Repealed. Pub. L. 100-418, title V, § 5113, Aug. 23, 1988, 102 Stat. 1432

Section 280, acts July 16, 1914, ch. 141, §1, 38 Stat. 502; 1978 Reorg. Plan No. 2, §102, 43 F.R. 36037, 92 Stat. 3783, related to promotion of apprentices in National Bureau of Standards.

Section 281, acts Mar. 4, 1913, ch. 150, §1, 37 Stat. 945; 1967 Reorg. Plan No. 3, §401, eff. Aug. 11, 1967, 32 F.R.

§ 292.5 Proposal selection process.

The proposal evaluation and selection process will consist of three principal phases: Proposal qualifications; proposal review and selection of finalists; and award determination as follows:

(a) *Proposal qualification.* All proposals will be reviewed by NIST to assure compliance with the proposal content and other basic provisions of this part. Proposals which satisfy these requirements will be designated qualified proposals; all others will be disqualified at this phase of the evaluation and selection process.

(b) *Proposal review and selection of finalists.* NIST will appoint an evaluation panel to review and evaluate all qualified proposals in accordance with the evaluation criteria and values set forth in this part. Evaluation panels will consist of NIST employees and in some cases other federal employees or non-federal experts who sign non-disclosure agreements. A site visit may be required to make full evaluation of a proposal. From the qualified proposals, a group of finalists will be numerically ranked and recommended for award based on this review.

(c) *Award determination.* The Director of the NIST, or her/his designee, shall select awardees based on total evaluation scores, geographic distribution, and the availability of funds. All three factors will be considered in making an award. Upon the final award decision, a notification will be made to each of the proposing organizations.

§ 292.6 Additional requirements.

*Federal policies and procedures.* Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

PART 295—ADVANCED TECHNOLOGY PROGRAM

Subpart A—General

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295.2 Definitions.  
295.3 Eligibility of United States- and foreign-owned businesses.

- 295.4 The selection process.  
295.5 Use of pre-proposals in the selection process.  
295.6 Criteria for selection.  
295.7 Notice of availability of funds.  
295.8 Intellectual property rights; publication of research results.  
295.9 Protection of confidential information.  
295.10 Special reporting and auditing requirements.  
295.11 Technical and educational services for ATP recipients.

Subpart B—Assistance to United States Industry-Led Joint Research and Development Ventures

- 295.20 Types of assistance available.  
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295.23 Dissolution of joint research and development ventures.  
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AUTHORITY: 15 U.S.C. 278n.

SOURCE: 55 FR 30145, July 24, 1990, unless otherwise noted.

Subpart A—General

§ 295.1 Purpose.

(a) The purpose of the Advanced Technology Program (ATP) is to assisted United States businesses to carry out research and development on high risk, high pay-off, emerging and enabling technologies. These technologies are:

- (1) High risk, because the technical challenges make success uncertain;  
(2) High pay-off, because when applied they offer significant benefits to the U.S. economy; and  
(3) Emerging and enabling, because they offer wide breadth of potential application and form an important technical basis for future commercial applications.

(b) The rules in this part prescribe policies and procedures for the award of cooperative agreements under the Advanced Technology Program in

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order to ensure the fair treatment of all proposals. While the Advanced Technology Program is authorized to enter into grants, cooperative agreements, and contracts to carry out its mission, the rules in this part address only the award of cooperative agreements. The Program employs cooperative agreements rather than grants because such agreements allow ATP to exercise appropriate management oversight of projects and also to link ATP-funded projects to ongoing R&D at the National Institute of Standards and Technology wherever such linkage would increase the likelihood of success of the project.

(c) In carrying out the rules in this part, the Program endeavors to put more emphasis on joint ventures and consortia with a broad range of participants, including large companies, and less emphasis on support of individual large companies.

[62 FR 64684, Dec. 9, 1997]

§ 295.2 Definitions.

(a) For the purposes of the ATP, the term *award* means Federal financial assistance made under a grant or cooperative agreement.

(b) The term *company* means a for-profit organization, including sole proprietors, partnerships, limited liability companies (LLCs), or corporations.

(c) The term *cooperative agreement* refers to a Federal assistance instrument used whenever the principal purpose of the relationship between the Federal Government and the recipient is the transfer of money, property, or services, or anything of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the recipient during performance of the contemplated activity.

(d) The term *direct costs* means costs that can be identified readily with activities carried out in support of a particular final objective. A cost may not be allocated to an award as a direct cost if any other cost incurred for the

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same purpose in like circumstances has been assigned to an award as an indirect cost. Because of the diverse characteristics and accounting practices of different organizations, it is not possible to specify the types of costs which may be classified as direct costs in all situations. However, typical direct costs could include salaries of personnel working on the ATP project and associated reasonable fringe benefits such as medical insurance. Direct costs might also include supplies and materials, special equipment required specifically for the ATP project, and travel associated with the ATP project. ATP shall determine the allowability of direct costs in accordance with applicable Federal cost principles.

(e) The term *foreign-owned company* means a company other than a United States-owned company as defined in § 295.2(q).

(f) The term *grant* means a Federal assistance instrument used whenever the principal purpose of the relationship between the Federal Government and the recipient is the transfer of money, property, services, or anything of value to the recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and no substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the recipient during performance of the contemplated activity.

(g) The term *independent research organization* (IRO) means a nonprofit research and development corporation or association organized under the laws of any state for the purpose of carrying out research and development on behalf of other organizations.

(h) The term *indirect costs* means those costs incurred for common or joint objectives that cannot be readily identified with activities carried out in support of a particular final objective. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as a direct cost. Because of diverse characteristics and accounting

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practices it is not possible to specify the types of costs which may be classified as indirect costs in all situations. However, typical examples of indirect costs include general administration expenses, such as the salaries and expenses of executive officers, personnel administration, maintenance, library expenses, and accounting. ATP shall determine the allowability of indirect costs in accordance with applicable Federal cost principles.

(i) The term *industry-led joint research and development venture* or *joint venture* means a business arrangement that consists of two or more separately-owned, for-profit companies that perform research and development in the project; control the joint venture's membership, research directions, and funding priorities; and share total project costs with the Federal government. The joint venture may include additional companies, independent research organizations, universities, and/or governmental laboratories (other than NIST) which may or may not contribute funds (other than Federal funds) to the project and perform research and development. A for-profit company or an independent research organization may serve as an Administrator and perform administrative tasks on behalf of a joint venture, such as handling receipts and disbursements of funds and making antitrust filings. The following activities are not permissible for ATP funded joint ventures:

- (1) Exchanging information among competitors relating to costs, sales, profitability, prices, marketing, or distribution of any product, process, or service that is not reasonably required to conduct the research and development that is the purpose of such venture;
- (2) Entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production or marketing by any person who is a party to such joint venture of any product, process, or service, other than the production or marketing of proprietary information developed through such venture, such as patents and trade secrets; and
- (3) Entering into any agreement or engaging in any other conduct:

- (i) To restrict or require the sale, licensing, or sharing of inventions or developments not developed through such venture, or
- (ii) To restrict or require participation by such party in other research and development activities, that is not reasonably required to prevent misappropriation of proprietary information contributed by any person who is a party to such venture or of the results of such venture.
- (j) The term *intellectual property* means an invention patentable under title 35, United States Code, or any patent on such an invention.
- (k) The term *large business* for a particular ATP competition means any business, including any parent company plus related subsidiaries, having annual revenues in excess of the amount published by ATP in the relevant annual notice of availability of funds required by §295.7(a). In establishing this amount, ATP may consider the dollar value of the total revenues of the 500th company in Fortune Magazine's Fortune 500 listing.
- (l) The term *matching funds or cost sharing* means that portion of project costs not borne by the Federal government. Sources of revenue to satisfy the required cost share include cash and in-kind contributions. Cash contributions can be from recipient, state, county, city, or other non-federal sources. In-kind contributions can be made by recipients or non-federal third parties (except subcontractors working on an ATP project) and include but are not limited to equipment, research tools, software, and supplies. Except as specified at §295.25, the value of in-kind contributions shall be determined in accordance with OMB Circular A-110, Subpart C, Section 23. The value of in-kind contributions will be prorated according to the share of total use dedicated to the ATP program. ATP restricts the total value of in-kind contributions that can be used to satisfy the cost share by requiring that such contributions not exceed 30 percent of the non-federal share of the total project costs. ATP shall determine the allowability of matching share costs in accordance with applicable federal cost principles.

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- (m) The term *person* shall be deemed to include corporations and associations existing under or authorized by the laws of either the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.
- (n) The term *Program* means the Advanced Technology Program.
- (o) The term *Secretary* means the Secretary of Commerce or the Secretary's designee.
- (p) The term *small business* means a business that is independently owned and operated, is organized for profit, and is not dominant in the field of operation in which it is proposing, and meets the other requirements found in 13 CFR part 121.
- (q) The term *United States-owned company* means a for-profit organization, including sole proprietors, partnerships, or corporations, that has a majority ownership or control by individuals who are citizens of the United States.

[55 FR 30145, July 24, 1990, as amended at 59 FR 666, 667, Jan. 6, 1994; 62 FR 64684, 64685, Dec. 9, 1997; 63 FR 64413, Nov. 20, 1998]

§ 295.3 Eligibility of United States- and foreign-owned businesses.

- (a) A company shall be eligible to receive an award from the Program only if:
  - (1) The Program finds that the company's participation in the Program would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided by the Program to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers; and
  - (2) Either the company is a United States-owned company, or the Program finds that the company is incorporated in the United States and has a parent

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- company which is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under the Program; affords the United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.
- (b) The Program may, within 30 days after notice to Congress, suspend a company or joint venture from continued assistance under the Program if the Program determines that the company, the country of incorporation of the company or a parent company, or the joint venture has failed to satisfy any of the criteria contained in paragraph (a) of this section, and that it is in the national interest of the United States to do so.
- (c) Companies owned by legal residents (green card holders) may apply to the Program, but before an award can be given, the owner(s) must either become a citizen or ownership must be transferred to a U.S. citizen(s).

[59 FR 667, Jan. 6, 1994, as amended at 62 FR 64685, Dec. 9, 1997]

§ 295.4 The selection process.

- (a) The selection process for awards is a multi-step process based on the criteria listed in § 295.6. Source evaluation boards (SEB) are established to ensure that all proposals receive careful consideration. In the first step, called "preliminary screening," proposals may be eliminated by the SEB that do not meet the requirements of this Part of the annual FEDERAL REGISTER Program announcement. Typical but not exclusive of the reasons for eliminating a proposal at this stage are that the proposal: is deemed to have serious deficiencies in either the technical or business plan; involves product development rather than high-risk R&D; is not industry-led; is significantly overpriced or underpriced given the scope of the work; does not meet the requirements set out in the notice of availability of funds issued pursuant to

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§295.7; or does not meet the cost-sharing requirement. NIST will also examine proposals that have been submitted to a previous competition to determine whether substantive revisions have been made to the earlier proposal, and, if not, may reject the proposal.

(b) In the second step, referred to as the “technical and business review,” proposals are evaluated under the criteria found in §295.6. Proposals judged by the SEB after considering the technical and business evaluations to have the highest merit based on the selection criteria receive further consideration and are referred to as “semifinalists.”

(c) In the third step, referred to as “selection of finalists,” the SEB prepares a final ranking of semifinalist proposals by a majority vote, based on the evaluation criteria in §295.6. During this step, the semifinalist proposers will be invited to an oral review of their proposals with NIST, and in some cases site visits may be required. Subject to the provisions of §295.6, a list of ranked finalists is submitted to the Selecting Official.

(d) In the final step, referred to as “selection of recipients,” the Selecting Official selects funding recipients from among the finalists, based upon: the SEB rank order of the proposals on the basis of all selection criteria (§295.6); assuring an appropriate distribution of funds among technologies and their applications; the availability of funds; and adherence to the Program selection criteria. The Program reserves the right to deny awards in any case where information is uncovered which raises a reasonable doubt as to the responsibility of the proposer. The decision of the Selecting Official is final.

(e) NIST reserves the right to negotiate the cost and scope of the proposed work with the proposers that have been selected to receive awards. For example, NIST may request that the proposer delete from the scope of work a particular task that is deemed by NIST to be product development or otherwise inappropriate for ATP support.

[63 FR 64413, Nov. 20, 1998]

§295.5 Use of pre-proposals in the selection process.

To reduce proposal preparation costs incurred by proposers and to make the selection process more efficient, NIST may use mandatory or optional preliminary qualification processes based on pre-proposals. In such cases, announcements requesting pre-proposals will be published as indicated in §295.7, and will seek abbreviated proposals (pre-proposals) that address both of the selection criteria, but in considerably less detail than full proposals. The Program will review the pre-proposals in accordance with the selection criteria and provide written feedback to the proposers to determine whether the proposed projects appear sufficiently promising to warrant further development into full proposals. Proposals are neither “accepted” or “rejected” at the pre-proposal stage. When the full proposals are received in response to the notice of availability of funds described in §295.7, the review and selection process will occur as described in §295.4.

[63 FR 64414, Nov. 20, 1998]

§295.6 Criteria for selection.

The evaluation criteria to be used in selecting any proposal for funding under this program, and their respective weights, are listed in this section. No proposal will be funded unless the Program determines that it has scientific and technological merit and that the proposed technology has strong potential for broad-based economic benefits to the nation. Additionally, no proposal will be funded that does not require Federal support, that is product development rather than high risk R&D, that does not display an appropriate level of commitment from the proposer, or does not have an adequate technical and commercialization plan.

(a) *Scientific and technological merit (50%).* The proposed technology must be highly innovative. The research must be challenging, with high technical risk. It must be aimed at overcoming an important problem(s) or exploiting a promising opportunity. The technical leverage of the technology must be adequately explained. The research must have a strong potential for

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advancing the state of the art and contributing significantly to the U.S. scientific and technical knowledge base. The technical plan must be clear and concise, and must clearly identify the core innovation, the technical approach, major technical hurdles, the attendant risks, and clearly establish feasibility through adequately detailed plans linked to major technical barriers. The plan must address the questions of “what, how, where, when, why, and by whom” in substantial detail. The Program will assess the proposing team’s relevant experience for pursuing the technical plan. The team carrying out the work must demonstrate a high level of scientific/technical expertise to conduct the R&D and have access to the necessary research facilities.

(b) *Potential for broad-based economic benefits (50%).* The proposed technology must have a strong potential to generate substantial benefits to the nation that extend significantly beyond the direct returns to the proposing organization(s). The proposal must explain why ATP support is needed and what difference ATP funding is expected to make in terms of what will be accomplished with the ATP funding versus without it. The pathways to economic benefit must be described, including the proposer’s plan for getting the technology into commercial use, as well as additional routes that might be taken to achieve broader diffusion of the technology. The proposal should identify the expected returns that the proposer expects to gain, as well as returns that are expected to accrue to others, i.e., spillover effects. The Program will assess the proposer’s relevant experience and level of commitment to the project and project’s organizational structure and management plan, including the extent to which participation by small businesses is encouraged and is a key component in a joint venture proposal, and for large company single proposers, the extent to which subcontractor/subrecipient teaming arrangements are featured and are a key component of the proposal.

[63 FR 64414, Nov. 20, 1998]

§ 295.7 Notice of availability of funds.

The Program shall publish at least annually a FEDERAL REGISTER notice

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inviting interested parties to submit proposals, and may more frequently publish invitations for proposals in the Commerce Business Daily, based upon the annual notice. Proposals must be submitted in accordance with the guidelines in the ATP Proposal Preparation Kit as identified in the published notice. Proposals will only be considered for funding when submitted in response to an invitation published in the FEDERAL REGISTER, or a related announcement in the Commerce Business Daily.

[63 FR 64414, Nov. 20, 1998]

§ 295.8 Intellectual property rights; publication of research results.

(a)(1) *Patent rights.* Title to inventions arising from assistance provided by the Program must vest in a company or companies incorporated in the United States. Joint ventures shall provide to NIST a copy of their written agreement which defines the disposition of ownership rights among the members of the joint venture, and their contractors and subcontractors as appropriate, that complies with the first sentence of this paragraph. The United States will reserve a nonexclusive, non-transferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any such intellectual property, but shall not, in the exercise of such license, publicly disclose proprietary information related to the license. Title to any such intellectual property shall not be transferred or passed, except to a company incorporated in the United States, until the expiration of the first patent obtained in connection with such intellectual property. Nothing in this paragraph shall be construed to prohibit the licensing to any company of intellectual property rights arising from assistance provided under this section.

(2) *Patent procedures.* Each award by the Program shall include provisions assuring the retention of a governmental use license in each disclosed invention, and the government’s retention of march-in rights. In addition, each award by the Program will contain procedures regarding reporting of subject inventions by the funding Recipient to the Program, including the

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subject inventions of members of the joint venture (if applicable) in which the funding Recipient is a participant, contractors and subcontractors of the funding Recipient. The funding Recipient shall disclose such subject inventions to the Program within two months after the inventor discloses it in writing to the Recipient's designated representative responsible for patent matters. The disclosure shall consist of a detailed, written report which provides the Program with the following: the title of the present invention; the names of all inventors; the name and address of the assignee (if any); an acknowledgment that the United States has rights in the subject invention; the filing date of the present invention, or, in the alternative, a statement identifying that the Recipient determined that filing was not feasible; an abstract of the disclosure; a description or summary of the present invention; the background of the present invention or the prior art; a description of the preferred embodiments; and what matter is claimed. Upon issuance of the patent, the funding Recipient or Recipients must notify the Program accordingly, providing it with the Serial Number of the patent as issued, the date of issuance, a copy of the disclosure as issued, and if appropriate, the name, address, and telephone number(s) of an assignee.

(b) *Copyrights*: Except as otherwise specifically provided for in an Award, funding recipients under the Program may establish claim to copyright subsisting in any data first produced in the performance of the award. When claim is made to copyright, the funding recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government, are published, or are deposited for registration as a published work in the U.S. Copyright Office. The funding recipient shall grant to the Government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, perform publicly and display publicly, and for data other than computer software

to distribute to the public by or on behalf of the Government.

(c) *Publication of research results*: The decision on whether or not to publish research results will be made by the funding recipient(s). Unpublished intellectual property owned and developed by any business or joint research and development venture receiving funding or by any member of such a joint venture may not be disclosed by any officer or employee of the Federal Government except in accordance with a written agreement between the owner or developer and the Program. The licenses granted to the Government under §295.8(b) shall not be considered a waiver of this requirement.

[55 FR 30145, July 24, 1990. Redesignated and amended at 59 FR 667, 669, Jan. 6, 1994; 63 FR 64414, Nov. 20, 1998]

§ 295.9 Protection of confidential information.

As required by section 278n(d)(5) of title 15 of the United States Code, the following information obtained by the Secretary on a confidential basis in connection with the activities of any business or joint research and development venture receiving funding under the program shall be exempt from disclosure under the Freedom of Information Act—

- (1) Information on the business operation of any member of the business or joint venture;
- (2) Trade secrets possessed by any business or any member of the joint venture.

[55 FR 30145, July 24, 1990. Redesignated at 59 FR 667, Jan. 6, 1994]

§ 295.10 Special reporting and auditing requirements.

Each award by the Program shall contain procedures regarding technical, business, and financial reporting and auditing requirements to ensure that awards are being used in accordance with the Program's objectives and applicable Federal cost principles. The purpose of the technical reporting is to monitor "best effort" progress toward overall project goals. The purpose of the business reporting system is to monitor project performance against the Program's mission as required by



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the Government Performance and Results Act (GPRA) mandate for program evaluation. The audit standards to be applied to ATP awards are the “Government Auditing Standards” (GAS) issued by the Comptroller General of the United States (also known as yellow book standards) and the ATP program-specified audit guidelines. The ATP program-specific audit guidelines include guidance on the number of audits required under an award. In the interest of efficiency, the recipients are encouraged to retain their own independent CPA firm to perform these audits. The Department of Commerce’s Office of Inspector General (OIG) reserves the right to conduct audits as deemed necessary and appropriate.

[62 FR 64686, Dec. 9, 1997. Redesignated at 63 FR 64415, Nov. 20, 1998]

§ 295.11 Technical and educational services for ATP recipients.

- (a) Under the Federal Technology Transfer Act of 1986, the National Institute of Standards and Technology of the Technology Administration has the authority to enter into cooperative research and development agreements with non-Federal parties to provide personnel, services, facilities, equipment, or other resources except funds toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory. In turn, the National Institute of Standards and Technology has the authority to accept funds, personnel, services, facilities, equipment and other resources from the non-Federal party or parties for the joint research effort. Cooperative research and development agreements do not include procurement contracts or cooperative agreements as those terms are used in sections 6303, 6304, and 6305 of title 31, United States Code.
- (b) In no event will the National Institute of Standards and Technology enter into a cooperative research and development agreement with a recipient of awards under the Program which provides for the payment of Program funds from the award recipient to the National Institute of Standards and Technology.
- (c) From time to time, ATP may conduct public workshops and undertake

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other educational activities to foster the collaboration of funding Recipients with other funding resources for purposes of further development and commercialization of ATP-related technologies. In no event will ATP provide recommendations, endorsements, or approvals of any ATP funding Recipients to any outside party.

[55 FR 30145, July 24, 1990. Redesignated at 59 FR 667, Jan. 6, 1994. Redesignated and amended at 63 FR 64415, Nov. 20, 1998]

Subpart B—Assistance to United States Industry-Led Joint Research and Development Ventures

§ 295.20 Types of assistance available.

- This subpart describes the types of assistance that may be provided under the authority of 15 U.S.C. 278n(b)(1). Such assistance includes but is not limited to:
- (a) Partial start-up funding for joint research and development ventures.
- (b) A minority share of the cost of joint research and development ventures for up to five years.
- (c) Equipment, facilities and personnel for joint research and development ventures.

§ 295.21 Qualifications of proposers.

Subject to the limitations set out in § 295.3, assistance under this subpart is available only to industry-led joint research and development ventures. These ventures may include universities, independent research organizations, and governmental entities. Proposals for funding under this Subpart may be submitted on behalf of a joint venture by a for-profit company or an independent research organization that is a member of the joint venture. Proposals should include letters of commitment or excerpts of such letters from all proposed members of the joint venture, verifying the availability of cost-sharing funds, and authorizing the party submitting the proposal to act on behalf of the venture with the Program on all matters pertaining to the proposal. No costs shall be incurred under an ATP project by the joint venture members until such time as a

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joint venture agreement has been executed by all of the joint venture members and approved by NIST. NIST will withhold approval until it determines that a sufficient number of members have signed the joint venture agreement. Costs will only be allowed after the execution of the joint venture agreement and approval by NIST.

[63 FR 64415, Nov. 20, 1998]

§ 295.22 Limitations on assistance.

- (a) An award will be made under this subpart only if the award will facilitate the formation of a joint venture or the initiation of a new research and development project by an existing joint venture.
- (b) The total value of any in-kind contributions used to satisfy the cost sharing requirement may not exceed 30 percent of the non-federal share of the total project costs.
- [62 FR 64687, Dec. 9, 1997]

§ 295.23 Dissolution of joint research and development ventures.

Upon dissolution of any joint research and development venture receiving funds under these procedures or at a time otherwise agreed upon, the Federal Government shall be entitled to a share of the residual assets of the joint venture proportional to the Federal share of the costs of the joint venture as determined by independent audit.

§ 295.24 Registration.

Joint ventures selected for funding under the Program must notify the Department of Justice and the Federal Trade Commission under the National Cooperative Research Act of 1984. No funds will be released prior to receipt by the Program of copies of such notification.

[63 FR 64415, Nov. 20, 1998]

§ 295.25 Special rule for the valuation of transfers between separately-owned joint venture members.

(a) *Applicability.* This section applies to transfers of goods, including computer software, and services provided by the transferor related to the maintenance of those goods, when those goods or services are transferred from

one joint venture member to other separately-owned joint venture members.

(b) *Rule.* The greater amount of the actual cost of the transferred goods and services as determined in accordance with applicable Federal cost principles, or 75 percent of the best customer price of the transferred goods and services, shall be deemed to be allowable costs; provided, however, that in no event shall the aggregate of these allowable costs exceed 30 percent of the non-Federal share of the total cost of the joint research and development program.

(c) *Definition.* The term “best customer price” shall mean the GSA schedule price, or if such price is unavailable, the lowest price at which a sale was made during the last twelve months prior to the transfer of the particular good or service.

[62 FR 64687, Dec. 9, 1997]

Subpart C—Assistance to Single-Proposer U.S. Businesses

§ 295.30 Types of assistance available.

This subpart describes the types of assistance that may be provided under the authority of 15 U.S.C. 278n(b)(2). Such assistance includes but is not limited to entering into cooperative agreements with United States businesses, especially small businesses.

[59 FR 670, Jan. 6, 1994]

§ 295.31 Qualification of proposers.

Awards under this subpart will be available to all businesses, subject to the limitations set out in §§295.3 and 295.32.

[62 FR 64687, Dec. 9, 1997]

§ 295.32 Limitations on assistance.

- (a) The Program will not directly provide funding under this subpart to any governmental entity, academic institution or independent research organization.
- (b) For proposals submitted to ATP after December 31, 1997, awards to large businesses made under this subpart shall not exceed 40 percent of the total project costs of those awards in any year of the award.

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(c) Awards under this subpart may not exceed \$2,000,000, or be for more than three years, unless the Secretary provides a written explanation to the authorizing committees of both Houses of Congress and then, only after thirty days during which both Houses of Congress are in session. No funding for indirect costs, profits, or management

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fees shall be available for awards made under this subpart.

(d) The total value of any in-kind contributions used to satisfy a cost sharing requirement may not exceed 30 percent of the non-federal share of the total project costs.

[62 FR 64687, Dec. 9, 1997]

**PARTS 296—299 [RESERVED]**

RULES  
/  
REGULATIONS

RULES

15 CFR §24.30

Changes

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Governments, and Non-Profit Organizations.” The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee, which expends \$300,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” have met the audit requirements of the Act. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee’s own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 24.36 shall be followed.

[53 FR 8048, 8087, Mar. 11, 1988, as amended at 62 FR 45939, 45940, Aug. 29, 1997]

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CHANGES, PROPERTY, AND SUBAWARDS

§ 24.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 24.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes—(1) Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a non-construction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency’s share exceeds \$100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and non-construction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any

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fund or budget transfer from non-construction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of §24.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget format the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see §24.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

**§ 24.31 Real property.**

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(1) The Federal awarding agency may require the placing of appropriate notices of record to advise that property has been acquired or improved with Federal financial assistance, and that use and disposition conditions apply to the property.

(2) [Reserved]

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses.

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§ 13.10 Accommodation of intergovernmental concerns.

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either:

- (1) Accepts the recommendation;
- (2) Reaches a mutually agreeable solution with the state process; or
- (3) Provides the single point of contact with a written explanation of the decision in such form as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 13.11 Obligations in interstate situations.

(a) The Secretary is responsible for:

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding pursuant to §13.10 of this part if the Secretary receives a recommendation from a designated

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areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in §13.10 if a state process provides a state process recommendation to the Department through a single point of contact.

PART 14—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NON-PROFIT, AND COMMERCIAL ORGANIZATIONS

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APPENDIX A TO PART 14—CONTRACT PROVISIONS

AUTHORITY: 5 U.S.C. 301; OMB Circular A-110 (64 FR 54926, October 8, 1999).

SOURCE: 63 FR 47156, Sept. 4, 1998, unless otherwise noted.

Subpart A—General

§ 14.1 Purpose.

This part establishes uniform administrative requirements for Department of Commerce (DoC) grants and agreements awarded to institutions of higher education, hospitals, other non-profit, and commercial organizations. The Grants Officer shall incorporate this part by reference into financial assistance awards made to organizations to which it will be applied. The DoC shall not impose additional or inconsistent requirements, except as provided in §§14.4, and 14.14 or unless specifically required by Federal statute or execu-

tive order. This part applies to grants and agreements awarded to foreign governments, organizations under the jurisdiction of foreign governments, and international organizations unless otherwise determined by the Grants Officer after coordination with the appropriate program officials. Uniform requirements for State, local, and tribal governments are in 15 CFR part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

§ 14.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

- (1) Goods and other tangible property received;
- (2) Services performed by employees, contractors, subrecipients, and other payees; and
- (3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

- (1) Earnings during a given period from services performed by the recipient, and goods and other tangible property delivered to purchasers; and
- (2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by electronic funds transfer, Treasury check, or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

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(e) *Assistant Secretary* means the DoC Chief Financial Officer and Assistant Secretary for Administration who has been delegated by the Secretary of Commerce the responsibility for developing and implementing policies, standards, and procedures for the administration of financial assistance programs of the DoC.

(f) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(g) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(h) *Closeout* means the process by which the Grants Officer determines that all applicable administrative actions and all required work of the award have been completed by the recipient and the DoC.

(i) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(j) *Cost sharing or matching* means that portion of project or program costs not borne by the Federal Government.

(k) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(l) *Disallowed costs* means those charges to an award that the Grants Officer determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(m) *DoC operating unit* means an organizational unit of the Department that has the authority to fund financial assistance awards.

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(n) *Equipment* means tangible non-expendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(o) *Excess property* means property under the control of the DoC that, as determined by the Grants Officer after coordination with the authorized property official, is no longer required for DoC needs or the discharge of its responsibilities.

(p) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where the DoC has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(q) *Federal awarding agency* means the Federal agency that provides an award to the recipient.

(r) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(s) *Federal share of real property, equipment, or supplies* means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(t) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(u) *Grants Officer* means the DoC official with the delegated authority to award, amend, administer, closeout, suspend, and/or terminate grants and cooperative agreements and make related determinations and findings.

(v) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and

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patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(w) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(x) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(y) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(z) *Prior approval* means written approval by an authorized official evidencing prior consent.

(aa) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in §14.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in DoC regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(bb) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(cc) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(dd) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(ee) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(ff) *Recipient* means an organization receiving financial assistance directly from the DoC to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the DoC. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(gg) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, other non-profit, and commercial

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institutions. “Research” is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. “Development” is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(hh) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently \$100,000).

(ii) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of “award” in paragraph (f) of this section.

(jj) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the DoC.

(kk) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (“subject inventions”), as defined in 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.”

(ll) *Suspension* means an action taken by the Grants Officer after coordina-

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tion with the DoC operating unit that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Grants Officer. Suspension of an award is a separate action from suspension under DoC regulations at 15 CFR part 26 implementing E.O.s 12549 and 12689, “Debarment and Suspension.”

(mm) *Termination* means the cancellation by the Grants Officer of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(nn) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(oo) *Unliquidated obligations*, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(pp) *Unobligated balance* means the portion of the funds authorized by the DoC that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(qq) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient’s approved negotiated indirect cost rate.

(rr) *Working capital advance* means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 14.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other non-regulatory materials which are inconsistent with the requirements of this

part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in §14.4.

Subpart B—Pre-Award Requirements

§ 14.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. The Assistant Secretary may apply more restrictive requirements to a class of recipients when approved by OMB. The Assistant Secretary may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by the Assistant Secretary. An exception made on a case-by-case basis will apply to a single award.

§ 14.10 Purpose.

Sections 14.11 through 14.18 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 14.11 Pre-award policies.

(a) *Use of grants and cooperative agreements, and contracts.* In each instance, the Grants Officer after coordination with the DoC operating unit shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, “substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement.” Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public notice and priority setting.* The DoC operating units shall notify the public of their intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute. At a minimum, public notices shall be published in the FEDERAL REGISTER.

§ 14.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals, other non-profit, or commercial organizations. This part also applies to subrecipients performing work under awards if the subrecipients are foreign governments, organizations under the jurisdiction of foreign governments, and international organizations unless otherwise determined by the Grants Officer. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments,” (15 CFR part 24).

§ 14.12 Forms for applying for Federal assistance.

(a) The DoC operating units shall comply with the applicable report clearance requirements of 5 CFR part 1320, “Controlling Paperwork Burdens on the Public,” with regard to all forms used by the DoC operating units in place of or as a supplement to the Standard Form 424 (SF-424) series.

(b) Applicants shall use the SF-424 series or those forms and instructions prescribed by the DoC.

§ 14.6 Availability of OMB circulars.

OMB circulars cited in this part are available from the Office of Management and Budget (OMB) by writing to the Executive Office of the President, Publications Service, 725 17th Street, NW, Suite 200, Washington DC 20503.



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(c) For Federal programs covered by E.O. 12372, “Intergovernmental Review of Federal Programs,” the applicant shall complete the appropriate sections of the SF-424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the DoC or the *Catalog of Federal Domestic Assistance*. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) DoC operating units that do not use the SF-424 form should indicate whether the application is subject to review by the State under E.O. 12372.

§ 14.13 Debarment and suspension.

The DoC and recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.s 12549 and 12689, “Debarment and Suspension,” which is implemented by DoC at 15 CFR part 26. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 14.14 High risk special award conditions.

If an applicant or recipient: has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in this part, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible, the Grants Officer may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once

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the conditions that prompted them have been corrected.

§ 14.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency’s procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. The DoC shall follow the provisions of E.O. 12770, “Metric Usage in Federal Government Programs.”

§ 14.16 Resource Conservation and Recovery Act (RCRA).

Under RCRA (Pub. L. 94-580, 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247-254). Accordingly, State and local institutions of higher education, hospitals, non-profit, and commercial organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 14.17 Certifications and representations.

Unless prohibited by statute or codified regulation, Grants Officers may allow recipients to submit certifications and representations required

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by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. When authorized, annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

**§ 14.18 Taxpayer identification number.**

In accordance with the provisions of the Debt Collection Improvement Act of 1996 (31 U.S.C. 7701), the taxpayer identifying number will be required from applicants for grants and cooperative agreements funded by the DoC. This number may be used for purposes of collecting and reporting on any delinquent amounts arising from awards made under this part.

**Subpart C—Post-Award Requirements**

FINANCIAL AND PROGRAM MANAGEMENT

**§ 14.20 Purpose of financial and program management.**

Sections 14.21 through 14.28 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, conducting audits, determining allowability of cost, and establishing fund availability.

**§ 14.21 Standards for financial management systems.**

- (a) The Grants Officer shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.
- (b) Recipients' financial management systems shall provide for the following:
  - (1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in §14.52. If the Grants Officer requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipi-

- ents may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.
- (2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
- (3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.
- (4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.
- (5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."
- (6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.
- (7) Accounting records including cost accounting records that are supported by source documentation.
- (c) Where the DoC guarantees or insures the repayment of money borrowed by the recipient, the Grants Officer may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.
- (d) The Grants Officer may require adequate fidelity bond coverage where the recipient lacks sufficient coverage



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to protect the Federal Government’s interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, “Surety Companies Doing Business with the United States.”

**§ 14.22 Payment.**

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205. Federal payments to recipients shall be made by electronic funds transfer in accordance with the Debt Collection Improvement Act of 1996, unless waived in accordance with the provisions of this Act.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability as established in §14.21. Advances of funds to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of advances of funds shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances may be consolidated to cover anticipated cash needs for all awards made by the DoC operating unit to the recipient.

(1) Advance payment mechanisms include, but are not limited to, electronic funds transfer and Treasury check when the electronic funds transfer requirement is waived.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients may submit requests for advances and reimbursements on a monthly basis.

(d) Requests for advance payment shall be submitted on SF-270, “Request for Advance or Reimbursement,” or other forms as may be authorized by OMB. This form is not to be used when advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special DoC instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. The Grants Officer may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the DoC shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients are authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Grants Officer after coordination with the operating unit has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Grants Officer may authorize payment on a working capital advance basis. Under this procedure, the Grants Officer shall provide for advancing funds to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee’s disbursing cycle. Thereafter, payments shall be provided by reimbursing the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient’s actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a

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revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional payments.

(h) Unless otherwise required by statute, Grants Officers shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraph (h) (1) or (2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A-129, "Managing Federal Credit Programs." Under such conditions, the Grants Officer may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, the DoC shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless paragraph (k) (1), (2) or (3) of this section apply.

(1) The recipient receives less than \$120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to \$250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Grants Officer, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this part, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Grants Officers shall not require more than an original and two copies of these forms.

(1) SF-270, Request for Advance or Reimbursement. DoC has adopted the SF-270 as a standard form for all non-construction programs when predetermined advance methods are not used. The Grants Officer, however, may waive the requirement to use the SF-270 for requesting funds under grants and cooperative agreements. Grants Officers have the option of using this form for construction programs in lieu of the SF-271, "Outlay Report and Request for Reimbursement for Construction Programs."

(2) SF-271, Outlay Report and Request for Reimbursement for Construction Programs. DoC has adopted the SF-271 as the standard form to be used for requesting reimbursement for construction programs. However, the Grants Officer may substitute the SF-270 when the Grants Officer determines that the SF-270 provides adequate information to meet Federal needs.

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**§ 14.23 Cost sharing or matching.**

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria:

- (1) Are verifiable from the recipient's records.
- (2) Are not included as contributions for any other federally-assisted project or program.
- (3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.
- (4) Are allowable under the applicable cost principles.
- (5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.
- (6) Are provided for in the approved budget.
- (7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Grants Officer.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If DoC authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraph (c) (1) or (2).

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Grants Officer may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the

recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraph (g) (1) or (2) of this section applies.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Grants Officer has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications:

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- (1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.
- § 14.24 Program income.**

(a) The standards set forth in this section shall apply in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with DoC regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following:

(1) Added to funds committed to the project by the DoC and recipient and used to further eligible project objectives.

(2) Used to finance the non-Federal share of the project.

(3) Deducted from the total project allowable cost in determining the net allowable costs on which the Federal share of costs is based.
- (c) When an agency authorizes the disposition of program income as described in paragraph (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the DoC does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(1) of this section shall apply automatically to all projects or programs.

(e) Unless DoC regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) Costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§14.30 through 14.37).

(h) Unless DoC regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.
- § 14.25 Revision of budget and program plans.**

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon DoC requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

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(c) For nonconstruction awards, recipients shall request prior approvals from the Grants Officer for one or more of the following program or budget related reasons. Approvals will be provided in writing by the Grants Officer.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the DoC.

(6) The inclusion, unless waived by the DoC, of costs that require prior approval in accordance with OMB Circular A-21, “Cost Principles for Educational Institutions,” OMB Circular A-122, “Cost Principles for Non-Profit Organizations,” 45 CFR part 74 Appendix E, “Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals,” or 48 CFR part 31, “Contract Cost Principles and Procedures,” as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) For nonconstruction awards, no other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, the Grants Officer may waive cost-related and administrative prior written approvals required by this part and OMB Circulars A-21 and A-122. Such waivers may include authorizing

recipients to do any one or more of the following:

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Grants Officer after coordination with the DoC operating unit. All pre-award costs are incurred at the recipient’s risk (i.e., the DoC is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Grants Officer in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the DoC provides otherwise in the award or in the DoC regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

(f) The recipient may not transfer funds among direct cost categories or programs, functions and activities for construction or nonconstruction awards in which the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Grants Officer. This does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget. No transfers are permitted that would cause any Federal appropriation or part thereof to be used for purposes

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- other than those consistent with the original intent of the appropriation.
- (g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.
- (h) For construction awards, recipients shall request prior written approval promptly from the Grants Officer for budget revisions whenever paragraph (h) (1), (2) or (3) apply. Approvals will be provided in writing by the Grants Officer.
- (1) The revision results from changes in the scope or the objective of the project or program.
- (2) The need arises for additional Federal funds to complete the project.
- (3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in §14.27.
- (i) For construction awards, no other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.
- (j) When the DoC makes an award that provides support for both construction and nonconstruction work, the Grants Officer may require the recipient to request prior approval from the Grants Officer before making any fund or budget transfers between the two types of work supported. Approvals will be provided in writing by the Grants Officer.
- (k) For both construction and nonconstruction awards, the DoC shall require recipients to notify the Grants Officer in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than \$5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.
- (l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Grants Officer indicates a letter of request suffices.
- (m) Within 30 calendar days from the date of receipt of the request for budget revisions, DoC shall review the request and the Grants Officer shall notify the recipient in writing whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Grants Officer shall inform the recipient in writing of the date when the recipient may expect the decision.
- § 14.26 Non-Federal audits.**
- (a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
- (b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
- (c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A-133 shall be subject to the audit requirements as stipulated in the award document.
- (d) Commercial and other organizations not covered by paragraph (a), (b), or (c) of this section shall be subject to the audit requirements as stipulated in the award document or the prime recipient as stipulated in the sub-award document.
- § 14.27 Allowable costs.**
- For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A-122, "Cost

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Principles for Non-Profit Organizations.” The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, “Cost Principles for Educational Institutions.” The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, “Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.” The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 14.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Grants Officer.

PROPERTY STANDARDS

§ 14.30 Purpose of property standards.

Sections 14.31 through 14.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. The DoC shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 14.31 through 14.37.

§ 14.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 14.32 Real property.

The DoC award shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following:

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed, provided that, in lieu of title, with the approval of the Grants Officer, the recipient may hold a leasehold or other interest in the property appropriate to the project purpose. The recipient shall not dispose of or encumber the property or any interest therein without approval of the Grants Officer.

(b) The recipient shall obtain written approval by the Grants Officer for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the DoC.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from the DoC or its successor Federal awarding agency. The responsible Federal agency shall observe one or more of the following disposition instructions:

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Grants Officer and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the

sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

**§ 14.33 Federally-owned and exempt property.**

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the DoC operating unit. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the DoC operating unit for further Federal agency utilization.

(2) If the DoC operating unit has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the DoC has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710(I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, “Improving Mathematics and Science Education in Support of the National Education Goals.”) Appropriate instructions shall be issued to the recipient by the Grants Officer.

(b) *Exempt property.* When statutory authority exists, the DoC has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the DoC considers appropriate. Such property is “exempt property.” Should the DoC not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

**§ 14.34 Equipment.**

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the DoC. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the DoC operating unit which funded the original project;

(2) Activities sponsored by other DoC operating units; then

(3) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the DoC operating unit that financed the equipment; second preference shall be given to projects or programs sponsored by other DoC operating units, and third preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Grants Officer after coordination with the DoC operating unit. User charges shall be treated as program income.



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(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Grants Officer after coordination with the DoC operating unit.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following:

(1) Equipment records shall be maintained accurately and shall include the following information:

- (i) A description of the equipment.
- (ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.
- (iii) Source of the equipment, including the award number.
- (iv) Whether title vests in the recipient or the Federal Government.
- (v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.
- (vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).
- (vii) Location and condition of the equipment and the date the information was reported.
- (viii) Unit acquisition cost.
- (ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the DoC for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

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(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Grants Officer.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. Equipment with a current per-unit fair market value of less than \$5000 may be retained, sold, or otherwise disposed of with no further obligation to the awarding agency. For equipment with a current per unit fair market value of \$5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the DoC operating unit or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Grants Officer. The Grants Officer shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Grants Officer to determine whether a requirement for the equipment exists in other Federal agencies. The Grants Officer shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the

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equipment and reimburse the DoC an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the DoC for such costs incurred in its disposition.

(h) The DoC reserves the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards:

(1) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(2) The Grants Officer shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the Grants Officer fails to issue written disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(3) When the DoC exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

**§ 14.35 Supplies and other expendable property.**

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of supplies exceeding \$5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

**§ 14.36 Intangible property.**

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The DoC reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the DoC at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) The Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the DoC shall request, and the recipient shall provide, within a reasonable time, the research data so that

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they can be made available to the public through the procedures established under the FOIA. If the DoC obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of this paragraph (d):

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (e.g., laboratory samples). *Research data* also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by the Federal Government in developing an agency action that has the force and effect of law* is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(e) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient

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shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without written approval from the Grants Officer. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 14.34(g).

[63 FR 47156, Sept. 4, 1998, as amended at 65 FR 14407, 14409, Mar. 16, 2000]

§ 14.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Grants Officer may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

PROCUREMENT STANDARDS

§ 14.40 Purpose of procurement standards.

Sections 14.41 through 14.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the DoC upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 14.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the DoC, regarding the settlement and satisfaction of all contractual and administrative issues arising

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out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 14.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 14.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall

be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 14.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that:

(1) Recipients avoid purchasing unnecessary items;

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government; and

(3) Solicitations for goods and services provide for all of the following:

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

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(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal:

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the DoC's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to

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other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, "Debarment and Suspension," as implemented by DoC regulations at 15 CFR part 26.

(e) Recipients shall, on request, make available for the Grants Officer, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently \$100,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

**§ 14.45 Cost and price analysis.**

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

**§ 14.46 Procurement records.**

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection;

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- (b) Justification for lack of competition when competitive bids or offers are not obtained; and
- (c) Basis for award cost or price.

§ 14.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 14.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to sub-contracts:

- (a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.
- (b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- (c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or sub-contracts exceeding \$100,000, the DoC may accept the bonding policy and requirements of the recipient, provided

the Grants Officer has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

- (1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- (2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- (3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.
- (4) Where bonds are required in the situations described in this part, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."
- (d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the DoC, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.
- (e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.

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REPORTS AND RECORDS

§ 14.50 Purpose of reports and records.

Sections 14.51 through 14.53 set forth the procedures for monitoring and reporting on the recipient’s financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 14.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 14.26.

(b) The Grants Officer after coordination with the DoC operating unit shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph (f) of this section, performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Grants Officer may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis

and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the DoC operating unit of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) The DoC may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 14.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients:

(1) SF-269 or SF-269A, Financial Status Report.

(i) Each DoC award shall require recipients to use the SF-269 or SF-269A to report the status of funds for all nonconstruction projects or programs. The DoC, however, has the option of not requiring the SF-269 or SF-269A when the SF-270, Request for Advance or Reimbursement, or SF-272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF-269 or SF-269A shall be required at the completion of the project when the SF-270 is used only for advances.

(ii) The DoC shall prescribe whether the report shall be on a cash or accrual basis. If the DoC requires accrual information and the recipient’s accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The DoC shall determine the frequency of the Financial Status Report

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for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The DoC shall require recipients to submit the SF-269 or SF-269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Grants Officer upon request of the recipient.

(2) SF-272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients the DoC shall require each recipient to submit the SF-272 and, when necessary, its continuation sheet, SF-272a. The DoC shall use this report to monitor funds advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) The DoC may require forecasts of Federal funds requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, the DoC may require recipients to report in the "Remarks" section the amount of advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF-272 15 calendar days following the end of each quarter. The Grants Officer may require a monthly report from those recipients receiving advances totaling \$1 million or more per year.

(v) The Grants Officer may waive the requirement for submission of the SF-272 for any one of the following reasons:

(A) When monthly advances do not exceed \$25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the Grants Officer's opinion, the recipient's accounting controls are

adequate to minimize excessive Federal advances; or

(C) When the electronic payment mechanisms provide adequate data.

(b) When the DoC needs additional information or more frequent reports, the following shall be observed:

(1) When additional information is needed to comply with legislative requirements, the Grants Officer shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When the DoC determines that a recipient's accounting system does not meet the standards in §14.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The DoC, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Grants Officers are encouraged to shade out any line item on any report if not necessary.

(4) The DoC may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) The DoC may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 14.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. The DoC shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the DoC. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-



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year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the DoC, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the DoC.

(d) The Grants Officer after coordination with the DoC operating unit shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a DoC operating unit or Grants Officer may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The DoC, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no DoC operating unit shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the DoC operating unit can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C.

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552) if the records had belonged to the DoC operating unit.

(g) Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If the recipient submits to the Federal awarding agency responsible for negotiating the recipient's indirect cost rate or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If the recipient is not required to submit to the cognizant Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

TERMINATION AND ENFORCEMENT

§ 14.60 Purpose of termination and enforcement.

Sections 14.61 and 14.62 set forth uniform suspension, termination and enforcement procedures.

§ 14.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraph (a)(1), (2) or (3) apply.

(1) By the Grants Officer, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Grants Officer with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

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- (3) By the recipient upon sending to the Grants Officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Grants Officer determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraph (a)(1) or (2).

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in §14.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

**§ 14.62 Enforcement.**

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Grants Officer may, in addition to imposing any of the special conditions outlined in §14.14, take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold payments of funds pending correction of the deficiency by the recipient or more severe enforcement action by the Grants Officer after coordination with the DoC operating unit.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.
- (c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (c) (1) and (2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the DoC implementing regulations (see §14.13) at 15 CFR part 26.
- Subpart D—After-the-Award Requirements**

**§ 14.70 Purpose.**

Sections 14.71 through 14.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

**§ 14.71 Closeout procedures.**

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Grants Officer may approve extensions when requested by the recipient.

(b) Unless the Grants Officer authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the

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terms and conditions of the award or in agency implementing instructions.

(c) The Grants Officer shall authorize and the DoC shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated funds that the DoC has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A-129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Grants Officer shall make a settlement for any upward or downward adjustments to the Federal share of costs after close-out reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§14.31 through 14.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the DoC shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 14.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of the DoC to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 14.26.

(4) Property management requirements in §§14.31 through 14.37.

(5) Records retention as required in § 14.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the DoC and the recipient, provided the responsibilities of the recipient referred to in §14.73(a), including those for property management as applicable, are considered and provisions made for con-

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tinuing responsibilities of the recipient, as appropriate.

§ 14.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Grants Officer may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the recipient; or

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the DoC shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, "Federal Claims Collection Standards."

APPENDIX A TO PART 14—CONTRACT PROVISIONS

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the DoC operating unit.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the DoC operating unit.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)*—Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.)* and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended—Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the DoC operating unit and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration’s List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, “Debarment and Suspension” as implemented by DoC regulations at 15 CFR part 26. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

PART 15—LEGAL PROCEEDINGS

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15 CFR §24.30  
Changes

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Governments, and Non-Profit Organizations.” The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.

(b) *Subgrantees.* State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subgrantee, which expends \$300,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, shall:

(1) Determine whether State or local subgrantees have met the audit requirements of the Act and whether subgrantees covered by OMB Circular A-110, “Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations,” have met the audit requirements of the Act. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should use their own procedures to ensure that the contractor has complied with laws and regulations affecting the expenditure of Federal funds;

(2) Determine whether the subgrantee spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subgrantee made in accordance with the Act, Circular A-110, or through other means (e.g., program reviews) if the subgrantee has not had such an audit;

(3) Ensure that appropriate corrective action is taken within six months after receipt of the audit report in instance of noncompliance with Federal laws and regulations;

(4) Consider whether subgrantee audits necessitate adjustment of the grantee’s own records; and

(5) Require each subgrantee to permit independent auditors to have access to the records and financial statements.

(c) *Auditor selection.* In arranging for audit services, § 24.36 shall be followed.

[53 FR 8048, 8087, Mar. 11, 1988, as amended at 62 FR 45939, 45940, Aug. 29, 1997]

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CHANGES, PROPERTY, AND SUBAWARDS

§ 24.30 Changes.

(a) *General.* Grantees and subgrantees are permitted to rebudget within the approved direct cost budget to meet unanticipated requirements and may make limited program changes to the approved project. However, unless waived by the awarding agency, certain types of post-award changes in budgets and projects shall require the prior written approval of the awarding agency.

(b) *Relation to cost principles.* The applicable cost principles (see § 24.22) contain requirements for prior approval of certain types of costs. Except where waived, those requirements apply to all grants and subgrants even if paragraphs (c) through (f) of this section do not.

(c) *Budget changes—(1) Nonconstruction projects.* Except as stated in other regulations or an award document, grantees or subgrantees shall obtain the prior approval of the awarding agency whenever any of the following changes is anticipated under a non-construction award:

(i) Any revision which would result in the need for additional funding.

(ii) Unless waived by the awarding agency, cumulative transfers among direct cost categories, or, if applicable, among separately budgeted programs, projects, functions, or activities which exceed or are expected to exceed ten percent of the current total approved budget, whenever the awarding agency’s share exceeds \$100,000.

(iii) Transfer of funds allotted for training allowances (i.e., from direct payments to trainees to other expense categories).

(2) *Construction projects.* Grantees and subgrantees shall obtain prior written approval for any budget revision which would result in the need for additional funds.

(3) *Combined construction and non-construction projects.* When a grant or subgrant provides funding for both construction and nonconstruction activities, the grantee or subgrantee must obtain prior written approval from the awarding agency before making any

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fund or budget transfer from non-construction to construction or vice versa.

(d) *Programmatic changes.* Grantees or subgrantees must obtain the prior approval of the awarding agency whenever any of the following actions is anticipated:

(1) Any revision of the scope or objectives of the project (regardless of whether there is an associated budget revision requiring prior approval).

(2) Need to extend the period of availability of funds.

(3) Changes in key persons in cases where specified in an application or a grant award. In research projects, a change in the project director or principal investigator shall always require approval unless waived by the awarding agency.

(4) Under nonconstruction projects, contracting out, subgranting (if authorized by law) or otherwise obtaining the services of a third party to perform activities which are central to the purposes of the award. This approval requirement is in addition to the approval requirements of §24.36 but does not apply to the procurement of equipment, supplies, and general support services.

(e) *Additional prior approval requirements.* The awarding agency may not require prior approval for any budget revision which is not described in paragraph (c) of this section.

(f) *Requesting prior approval.* (1) A request for prior approval of any budget revision will be in the same budget format the grantee used in its application and shall be accompanied by a narrative justification for the proposed revision.

(2) A request for a prior approval under the applicable Federal cost principles (see §24.22) may be made by letter.

(3) A request by a subgrantee for prior approval will be addressed in writing to the grantee. The grantee will promptly review such request and shall approve or disapprove the request in writing. A grantee will not approve any budget or project revision which is inconsistent with the purpose or terms and conditions of the Federal grant to the grantee. If the revision, requested by the subgrantee would result in a change to the grantee's approved project which requires Federal prior approval, the grantee will obtain the Federal agency's approval before approving the subgrantee's request.

§ 24.31 Real property.

(a) *Title.* Subject to the obligations and conditions set forth in this section, title to real property acquired under a grant or subgrant will vest upon acquisition in the grantee or subgrantee respectively.

(b) *Use.* Except as otherwise provided by Federal statutes, real property will be used for the originally authorized purposes as long as needed for that purposes, and the grantee or subgrantee shall not dispose of or encumber its title or other interests.

(1) The Federal awarding agency may require the placing of appropriate notices of record to advise that property has been acquired or improved with Federal financial assistance, and that use and disposition conditions apply to the property.

(2) [Reserved]

(c) *Disposition.* When real property is no longer needed for the originally authorized purpose, the grantee or subgrantee will request disposition instructions from the awarding agency. The instructions will provide for one of the following alternatives:

(1) *Retention of title.* Retain title after compensating the awarding agency. The amount paid to the awarding agency will be computed by applying the awarding agency's percentage of participation in the cost of the original purchase to the fair market value of the property. However, in those situations where a grantee or subgrantee is disposing of real property acquired with grant funds and acquiring replacement real property under the same program, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.

(2) *Sale of property.* Sell the property and compensate the awarding agency. The amount due to the awarding agency will be calculated by applying the awarding agency's percentage of participation in the cost of the original purchase to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses.



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§ 13.10 Accommodation of intergovernmental concerns.

(a) If a state process provides a state process recommendation to the Department through its single point of contact, the Secretary either:

- (1) Accepts the recommendation;
- (2) Reaches a mutually agreeable solution with the state process; or
- (3) Provides the single point of contact with a written explanation of the decision in such form as the Secretary in his or her discretion deems appropriate. The Secretary may also supplement the written explanation by providing the explanation to the single point of contact by telephone, other telecommunication, or other means.

(b) In any explanation under paragraph (a)(3) of this section, the Secretary informs the single point of contact that:

(1) The Department will not implement its decision for at least ten days after the single point of contact receives the explanation; or

(2) The Secretary has reviewed the decision and determined that, because of unusual circumstances, the waiting period of at least ten days is not feasible.

(c) For purposes of computing the waiting period under paragraph (b)(1) of this section, a single point of contact is presumed to have received written notification 5 days after the date of mailing of such notification.

§ 13.11 Obligations in interstate situations.

(a) The Secretary is responsible for:

(1) Identifying proposed Federal financial assistance and direct Federal development that have an impact on interstate areas;

(2) Notifying appropriate officials and entities in states which have adopted a process and which select the Department's program or activity.

(3) Making efforts to identify and notify the affected state, areawide, regional, and local officials and entities in those states that have not adopted a process under the Order or do not select the Department's program or activity;

(4) Responding pursuant to §13.10 of this part if the Secretary receives a recommendation from a designated

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areawide agency transmitted by a single point of contact, in cases in which the review, coordination, and communication with the Department have been delegated.

(b) The Secretary uses the procedures in §13.10 if a state process provides a state process recommendation to the Department through a single point of contact.

PART 14—UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NON-PROFIT, AND COMMERCIAL ORGANIZATIONS

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APPENDIX A TO PART 14—CONTRACT PROVISIONS

AUTHORITY: 5 U.S.C. 301; OMB Circular A-110 (64 FR 54926, October 8, 1999).

SOURCE: 63 FR 47156, Sept. 4, 1998, unless otherwise noted.

Subpart A—General

§ 14.1 Purpose.

This part establishes uniform administrative requirements for Department of Commerce (DoC) grants and agreements awarded to institutions of higher education, hospitals, other non-profit, and commercial organizations. The Grants Officer shall incorporate this part by reference into financial assistance awards made to organizations to which it will be applied. The DoC shall not impose additional or inconsistent requirements, except as provided in §§14.4, and 14.14 or unless specifically required by Federal statute or execu-

tive order. This part applies to grants and agreements awarded to foreign governments, organizations under the jurisdiction of foreign governments, and international organizations unless otherwise determined by the Grants Officer after coordination with the appropriate program officials. Uniform requirements for State, local, and tribal governments are in 15 CFR part 24, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

§ 14.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for:

- (1) Goods and other tangible property received;
- (2) Services performed by employees, contractors, subrecipients, and other payees; and
- (3) Other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of:

- (1) Earnings during a given period from services performed by the recipient, and goods and other tangible property delivered to purchasers; and
- (2) Amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by electronic funds transfer, Treasury check, or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

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(e) *Assistant Secretary* means the DoC Chief Financial Officer and Assistant Secretary for Administration who has been delegated by the Secretary of Commerce the responsibility for developing and implementing policies, standards, and procedures for the administration of financial assistance programs of the DoC.

(f) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(g) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(h) *Closeout* means the process by which the Grants Officer determines that all applicable administrative actions and all required work of the award have been completed by the recipient and the DoC.

(i) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(j) *Cost sharing or matching* means that portion of project or program costs not borne by the Federal Government.

(k) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(l) *Disallowed costs* means those charges to an award that the Grants Officer determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(m) *DoC operating unit* means an organizational unit of the Department that has the authority to fund financial assistance awards.

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(n) *Equipment* means tangible non-expendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(o) *Excess property* means property under the control of the DoC that, as determined by the Grants Officer after coordination with the authorized property official, is no longer required for DoC needs or the discharge of its responsibilities.

(p) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where the DoC has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(q) *Federal awarding agency* means the Federal agency that provides an award to the recipient.

(r) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(s) *Federal share of real property, equipment, or supplies* means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(t) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(u) *Grants Officer* means the DoC official with the delegated authority to award, amend, administer, closeout, suspend, and/or terminate grants and cooperative agreements and make related determinations and findings.

(v) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and

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patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(w) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(x) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(y) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(z) *Prior approval* means written approval by an authorized official evidencing prior consent.

(aa) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in §14.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in DoC regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(bb) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(cc) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(dd) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(ee) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(ff) *Recipient* means an organization receiving financial assistance directly from the DoC to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the DoC. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(gg) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, other non-profit, and commercial

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institutions. “Research” is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. “Development” is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(hh) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently \$100,000).

(ii) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of “award” in paragraph (f) of this section.

(jj) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the DoC.

(kk) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (“subject inventions”), as defined in 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements.”

(ll) *Suspension* means an action taken by the Grants Officer after coordina-

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tion with the DoC operating unit that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Grants Officer. Suspension of an award is a separate action from suspension under DoC regulations at 15 CFR part 26 implementing E.O.s 12549 and 12689, “Debarment and Suspension.”

(mm) *Termination* means the cancellation by the Grants Officer of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(nn) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(oo) *Unliquidated obligations*, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(pp) *Unobligated balance* means the portion of the funds authorized by the DoC that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(qq) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient’s approved negotiated indirect cost rate.

(rr) *Working capital advance* means a procedure whereby funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

§ 14.3 Effect on other issuances.

For awards subject to this part, all administrative requirements of codified program regulations, program manuals, handbooks and other non-regulatory materials which are inconsistent with the requirements of this

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part shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in §14.4.

§ 14.4 Deviations.

The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this part when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this part shall be permitted only in unusual circumstances. The Assistant Secretary may apply more restrictive requirements to a class of recipients when approved by OMB. The Assistant Secretary may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by the Assistant Secretary. An exception made on a case-by-case basis will apply to a single award.

§ 14.5 Subawards.

Unless sections of this part specifically exclude subrecipients from coverage, the provisions of this part shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals, other non-profit, or commercial organizations. This part also applies to subrecipients performing work under awards if the subrecipients are foreign governments, organizations under the jurisdiction of foreign governments, and international organizations unless otherwise determined by the Grants Officer. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," (15 CFR part 24).

§ 14.6 Availability of OMB circulars.

OMB circulars cited in this part are available from the Office of Management and Budget (OMB) by writing to the Executive Office of the President, Publications Service, 725 17th Street, NW, Suite 200, Washington DC 20503.

Subpart B—Pre-Award Requirements

§ 14.10 Purpose.

Sections 14.11 through 14.18 prescribe forms and instructions and other pre-award matters to be used in applying for Federal awards.

§ 14.11 Pre-award policies.

(a) *Use of grants and cooperative agreements, and contracts.* In each instance, the Grants Officer after coordination with the DoC operating unit shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301-08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) *Public notice and priority setting.* The DoC operating units shall notify the public of their intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute. At a minimum, public notices shall be published in the FEDERAL REGISTER.

§ 14.12 Forms for applying for Federal assistance.

(a) The DoC operating units shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used by the DoC operating units in place of or as a supplement to the Standard Form 424 (SF-424) series.

(b) Applicants shall use the SF-424 series or those forms and instructions prescribed by the DoC.

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(c) For Federal programs covered by E.O. 12372, “Intergovernmental Review of Federal Programs,” the applicant shall complete the appropriate sections of the SF-424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the DoC or the *Catalog of Federal Domestic Assistance*. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) DoC operating units that do not use the SF-424 form should indicate whether the application is subject to review by the State under E.O. 12372.

§ 14.13 Debarment and suspension.

The DoC and recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.s 12549 and 12689, “Debarment and Suspension,” which is implemented by DoC at 15 CFR part 26. This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

§ 14.14 High risk special award conditions.

If an applicant or recipient: has a history of poor performance, is not financially stable, has a management system that does not meet the standards prescribed in this part, has not conformed to the terms and conditions of a previous award, or is not otherwise responsible, the Grants Officer may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once

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the conditions that prompted them have been corrected.

§ 14.15 Metric system of measurement.

The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency’s procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. The DoC shall follow the provisions of E.O. 12770, “Metric Usage in Federal Government Programs.”

§ 14.16 Resource Conservation and Recovery Act (RCRA).

Under RCRA (Pub. L. 94–580, 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). Accordingly, State and local institutions of higher education, hospitals, non-profit, and commercial organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

§ 14.17 Certifications and representations.

Unless prohibited by statute or codified regulation, Grants Officers may allow recipients to submit certifications and representations required



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by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. When authorized, annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

**§ 14.18 Taxpayer identification number.**

In accordance with the provisions of the Debt Collection Improvement Act of 1996 (31 U.S.C. 7701), the taxpayer identifying number will be required from applicants for grants and cooperative agreements funded by the DoC. This number may be used for purposes of collecting and reporting on any delinquent amounts arising from awards made under this part.

**Subpart C—Post-Award Requirements**

FINANCIAL AND PROGRAM MANAGEMENT

**§ 14.20 Purpose of financial and program management.**

Sections 14.21 through 14.28 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, conducting audits, determining allowability of cost, and establishing fund availability.

**§ 14.21 Standards for financial management systems.**

- (a) The Grants Officer shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.
- (b) Recipients' financial management systems shall provide for the following:
  - (1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in §14.52. If the Grants Officer requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipi-

- ents may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.
- (2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.
- (3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.
- (4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.
- (5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101-453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."
- (6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.
- (7) Accounting records including cost accounting records that are supported by source documentation.
- (c) Where the DoC guarantees or insures the repayment of money borrowed by the recipient, the Grants Officer may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.
- (d) The Grants Officer may require adequate fidelity bond coverage where the recipient lacks sufficient coverage

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to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

§ 14.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205. Federal payments to recipients shall be made by electronic funds transfer in accordance with the Debt Collection Improvement Act of 1996, unless waived in accordance with the provisions of this Act.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and financial management systems that meet the standards for fund control and accountability as established in §14.21. Advances of funds to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of advances of funds shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances may be consolidated to cover anticipated cash needs for all awards made by the DoC operating unit to the recipient.

(1) Advance payment mechanisms include, but are not limited to, electronic funds transfer and Treasury check when the electronic funds transfer requirement is waived.

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(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients may submit requests for advances and reimbursements on a monthly basis.

(d) Requests for advance payment shall be submitted on SF-270, "Request for Advance or Reimbursement," or other forms as may be authorized by OMB. This form is not to be used when advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special DoC instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) of this section cannot be met. The Grants Officer may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the DoC shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients are authorized to submit request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Grants Officer after coordination with the operating unit has determined that reimbursement is not feasible because the recipient lacks sufficient working

capital, the Grants Officer may authorize payment on a working capital advance basis. Under this procedure, the Grants Officer shall provide for advancing funds to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, payments shall be provided by reimbursing the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a

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revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional payments.

(h) Unless otherwise required by statute, Grants Officers shall not withhold payments for proper charges made by recipients at any time during the project period unless paragraph (h) (1) or (2) of this section apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A-129, "Managing Federal Credit Programs." Under such conditions, the Grants Officer may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2) of this section, the DoC shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless paragraph (k) (1), (2) or (3) of this section apply.

(1) The recipient receives less than \$120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of \$250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to \$250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Grants Officer, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this part, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Grants Officers shall not require more than an original and two copies of these forms.

(1) SF-270, Request for Advance or Reimbursement. DoC has adopted the SF-270 as a standard form for all non-construction programs when predetermined advance methods are not used. The Grants Officer, however, may waive the requirement to use the SF-270 for requesting funds under grants and cooperative agreements. Grants Officers have the option of using this form for construction programs in lieu of the SF-271, "Outlay Report and Request for Reimbursement for Construction Programs."

(2) SF-271, Outlay Report and Request for Reimbursement for Construction Programs. DoC has adopted the SF-271 as the standard form to be used for requesting reimbursement for construction programs. However, the Grants Officer may substitute the SF-270 when the Grants Officer determines that the SF-270 provides adequate information to meet Federal needs.

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§ 14.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria:

- (1) Are verifiable from the recipient's records.
- (2) Are not included as contributions for any other federally-assisted project or program.
- (3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.
- (4) Are allowable under the applicable cost principles.
- (5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.
- (6) Are provided for in the approved budget.

(7) Conform to other provisions of this part, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Grants Officer.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If DoC authorizes recipients to donate buildings or land for construction/facilities acquisition projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of paragraph (c) (1) or (2).

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Grants Officer may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the

recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if paragraph (g) (1) or (2) of this section applies.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Grants Officer has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications:

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- (1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties:

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.
- § 14.24 Program income.**

(a) The standards set forth in this section shall apply in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) of this section, program income earned during the project period shall be retained by the recipient and, in accordance with DoC regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following:

(1) Added to funds committed to the project by the DoC and recipient and used to further eligible project objectives.

(2) Used to finance the non-Federal share of the project.

(3) Deducted from the total project allowable cost in determining the net allowable costs on which the Federal share of costs is based.
- (c) When an agency authorizes the disposition of program income as described in paragraph (b)(1) or (b)(2) of this section, program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3) of this section.

(d) In the event that the DoC does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(1) of this section shall apply automatically to all projects or programs.

(e) Unless DoC regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) Costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See §§14.30 through 14.37).

(h) Unless DoC regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.
- § 14.25 Revision of budget and program plans.**

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon DoC requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

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(c) For nonconstruction awards, recipients shall request prior approvals from the Grants Officer for one or more of the following program or budget related reasons. Approvals will be provided in writing by the Grants Officer.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the DoC.

(6) The inclusion, unless waived by the DoC, of costs that require prior approval in accordance with OMB Circular A-21, "Cost Principles for Educational Institutions," OMB Circular A-122, "Cost Principles for Non-Profit Organizations," 45 CFR part 74 Appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) For nonconstruction awards, no other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, the Grants Officer may waive cost-related and administrative prior written approvals required by this part and OMB Circulars A-21 and A-122. Such waivers may include authorizing

recipients to do any one or more of the following:

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Grants Officer after coordination with the DoC operating unit. All pre-award costs are incurred at the recipient's risk (i.e., the DoC is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Grants Officer in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the DoC provides otherwise in the award or in the DoC regulations, the prior approval requirements described in paragraph (e) of this section are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) of this section applies.

(f) The recipient may not transfer funds among direct cost categories or programs, functions and activities for construction or nonconstruction awards in which the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Grants Officer. This does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget. No transfers are permitted that would cause any Federal appropriation or part thereof to be used for purposes

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- other than those consistent with the original intent of the appropriation.
- (g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j) of this section, do not require prior approval.
- (h) For construction awards, recipients shall request prior written approval promptly from the Grants Officer for budget revisions whenever paragraph (h) (1), (2) or (3) apply. Approvals will be provided in writing by the Grants Officer.
- (1) The revision results from changes in the scope or the objective of the project or program.
- (2) The need arises for additional Federal funds to complete the project.
- (3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in §14.27.
- (i) For construction awards, no other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.
- (j) When the DoC makes an award that provides support for both construction and nonconstruction work, the Grants Officer may require the recipient to request prior approval from the Grants Officer before making any fund or budget transfers between the two types of work supported. Approvals will be provided in writing by the Grants Officer.
- (k) For both construction and nonconstruction awards, the DoC shall require recipients to notify the Grants Officer in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than \$5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.
- (l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Grants Officer indicates a letter of request suffices.
- (m) Within 30 calendar days from the date of receipt of the request for budget revisions, DoC shall review the request and the Grants Officer shall notify the recipient in writing whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Grants Officer shall inform the recipient in writing of the date when the recipient may expect the decision.
- § 14.26 Non-Federal audits.**
- (a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations (including hospitals) shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
- (b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and revised OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
- (c) For-profit hospitals not covered by the audit provisions of revised OMB Circular A-133 shall be subject to the audit requirements as stipulated in the award document.
- (d) Commercial and other organizations not covered by paragraph (a), (b), or (c) of this section shall be subject to the audit requirements as stipulated in the award document or the prime recipient as stipulated in the sub-award document.
- § 14.27 Allowable costs.**
- For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A-87, "Cost Principles for State, Local and Indian Tribal Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A-122, "Cost



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Principles for Non-Profit Organizations.” The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, “Cost Principles for Educational Institutions.” The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, “Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals.” The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

§ 14.28 Period of availability of funds.

Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Grants Officer.

PROPERTY STANDARDS

§ 14.30 Purpose of property standards.

Sections 14.31 through 14.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. The DoC shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of §§ 14.31 through 14.37.

§ 14.31 Insurance coverage.

Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

§ 14.32 Real property.

The DoC award shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following:

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed, provided that, in lieu of title, with the approval of the Grants Officer, the recipient may hold a leasehold or other interest in the property appropriate to the project purpose. The recipient shall not dispose of or encumber the property or any interest therein without approval of the Grants Officer.

(b) The recipient shall obtain written approval by the Grants Officer for the use of real property in other federally-sponsored projects when the recipient determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the DoC.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b) of this section, the recipient shall request disposition instructions from the DoC or its successor Federal awarding agency. The responsible Federal agency shall observe one or more of the following disposition instructions:

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Grants Officer and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the



sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

**§ 14.33 Federally-owned and exempt property.**

(a) *Federally-owned property.* (1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the DoC operating unit. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the DoC operating unit for further Federal agency utilization.

(2) If the DoC operating unit has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the DoC has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710(I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, “Improving Mathematics and Science Education in Support of the National Education Goals.”) Appropriate instructions shall be issued to the recipient by the Grants Officer.

(b) *Exempt property.* When statutory authority exists, the DoC has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the DoC considers appropriate. Such property is “exempt property.” Should the DoC not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

**§ 14.34 Equipment.**

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the DoC. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority:

(1) Activities sponsored by the DoC operating unit which funded the original project;

(2) Activities sponsored by other DoC operating units; then

(3) Activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the DoC operating unit that financed the equipment; second preference shall be given to projects or programs sponsored by other DoC operating units, and third preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Grants Officer after coordination with the DoC operating unit. User charges shall be treated as program income.

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- (e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Grants Officer after coordination with the DoC operating unit.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following:

(1) Equipment records shall be maintained accurately and shall include the following information:

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the DoC for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Grants Officer.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. Equipment with a current per-unit fair market value of less than \$5000 may be retained, sold, or otherwise disposed of with no further obligation to the awarding agency. For equipment with a current per unit fair market value of \$5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the DoC operating unit or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Grants Officer. The Grants Officer shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Grants Officer to determine whether a requirement for the equipment exists in other Federal agencies. The Grants Officer shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the
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equipment and reimburse the DoC an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share \$500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the DoC for such costs incurred in its disposition.

(h) The DoC reserves the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards:

(1) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(2) The Grants Officer shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the Grants Officer fails to issue written disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(3) When the DoC exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

**§ 14.35 Supplies and other expendable property.**

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of supplies exceeding \$5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

**§ 14.36 Intangible property.**

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The DoC reserves a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the DoC at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) The Federal Government has the right to:

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award; and

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d)(1) In addition, in response to a Freedom of Information Act (FOIA) request for research data relating to published research findings produced under an award that were used by the Federal Government in developing an agency action that has the force and effect of law, the DoC shall request, and the recipient shall provide, within a reasonable time, the research data so that

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they can be made available to the public through the procedures established under the FOIA. If the DoC obtains the research data solely in response to a FOIA request, the agency may charge the requester a reasonable fee equaling the full incremental cost of obtaining the research data. This fee should reflect costs incurred by the agency, the recipient, and applicable subrecipients. This fee is in addition to any fees the agency may assess under the FOIA (5 U.S.C. 552(a)(4)(A)).

(2) The following definitions apply for purposes of this paragraph (d):

(i) *Research data* is defined as the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (e.g., laboratory samples). *Research data* also do not include:

(A) Trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and

(B) Personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.

(ii) *Published* is defined as either when:

(A) Research findings are published in a peer-reviewed scientific or technical journal; or

(B) A Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(iii) *Used by the Federal Government in developing an agency action that has the force and effect of law* is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

(e) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient

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shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without written approval from the Grants Officer. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of § 14.34(g).

[63 FR 47156, Sept. 4, 1998, as amended at 65 FR 14407, 14409, Mar. 16, 2000]

§ 14.37 Property trust relationship.

Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Grants Officer may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

PROCUREMENT STANDARDS

§ 14.40 Purpose of procurement standards.

Sections 14.41 through 14.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the DoC upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

§ 14.41 Recipient responsibilities.

The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the DoC, regarding the settlement and satisfaction of all contractual and administrative issues arising

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out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

§ 14.42 Codes of conduct.

The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

§ 14.43 Competition.

All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall

be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

§ 14.44 Procurement procedures.

- (a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that:
  - (1) Recipients avoid purchasing unnecessary items;
  - (2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government; and
  - (3) Solicitations for goods and services provide for all of the following:
    - (i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.
    - (ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.
    - (iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.
    - (iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.
    - (v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.
    - (vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

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(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal:

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the DoC's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to

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other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, "Debarment and Suspension," as implemented by DoC regulations at 15 CFR part 26.

(e) Recipients shall, on request, make available for the Grants Officer, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply:

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in this part.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently \$100,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

**§ 14.45 Cost and price analysis.**

Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

**§ 14.46 Procurement records.**

Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum:

(a) Basis for contractor selection;

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- (b) Justification for lack of competition when competitive bids or offers are not obtained; and
- (c) Basis for award cost or price.

§ 14.47 Contract administration.

A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

§ 14.48 Contract provisions.

The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to sub-contracts:

- (a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.
- (b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.
- (c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds \$100,000. For those contracts or sub-contracts exceeding \$100,000, the DoC may accept the bonding policy and requirements of the recipient, provided

the Grants Officer has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows:

- (1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.
- (2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- (3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.
- (4) Where bonds are required in the situations described in this part, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."
- (d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the DoC, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.
- (e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this part, as applicable.

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REPORTS AND RECORDS

§ 14.50 Purpose of reports and records.

Sections 14.51 through 14.53 set forth the procedures for monitoring and reporting on the recipient’s financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

§ 14.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in § 14.26.

(b) The Grants Officer after coordination with the DoC operating unit shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph (f) of this section, performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Grants Officer may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following:

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis

and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the DoC operating unit of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) The DoC may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

§ 14.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients:

(1) SF-269 or SF-269A, Financial Status Report.

(i) Each DoC award shall require recipients to use the SF-269 or SF-269A to report the status of funds for all nonconstruction projects or programs. The DoC, however, has the option of not requiring the SF-269 or SF-269A when the SF-270, Request for Advance or Reimbursement, or SF-272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF-269 or SF-269A shall be required at the completion of the project when the SF-270 is used only for advances.

(ii) The DoC shall prescribe whether the report shall be on a cash or accrual basis. If the DoC requires accrual information and the recipient’s accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The DoC shall determine the frequency of the Financial Status Report



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for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The DoC shall require recipients to submit the SF-269 or SF-269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Grants Officer upon request of the recipient.

(2) SF-272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients the DoC shall require each recipient to submit the SF-272 and, when necessary, its continuation sheet, SF-272a. The DoC shall use this report to monitor funds advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) The DoC may require forecasts of Federal funds requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, the DoC may require recipients to report in the "Remarks" section the amount of advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF-272 15 calendar days following the end of each quarter. The Grants Officer may require a monthly report from those recipients receiving advances totaling \$1 million or more per year.

(v) The Grants Officer may waive the requirement for submission of the SF-272 for any one of the following reasons:

(A) When monthly advances do not exceed \$25,000 per recipient, provided that such advances are monitored through other forms contained in this section;

(B) If, in the Grants Officer's opinion, the recipient's accounting controls are

adequate to minimize excessive Federal advances; or

(C) When the electronic payment mechanisms provide adequate data.

(b) When the DoC needs additional information or more frequent reports, the following shall be observed:

(1) When additional information is needed to comply with legislative requirements, the Grants Officer shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When the DoC determines that a recipient's accounting system does not meet the standards in §14.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The DoC, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Grants Officers are encouraged to shade out any line item on any report if not necessary.

(4) The DoC may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) The DoC may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

§ 14.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. The DoC shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the DoC. The only exceptions are the following:

(1) If any litigation, claim, or audit is started before the expiration of the 3-

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year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the DoC, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph (g) of this section.

(c) Copies of original records may be substituted for the original records if authorized by the DoC.

(d) The Grants Officer after coordination with the DoC operating unit shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a DoC operating unit or Grants Officer may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The DoC, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no DoC operating unit shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the DoC operating unit can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C.

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552) if the records had belonged to the DoC operating unit.

(g) Paragraphs (g)(1) and (g)(2) of this section apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If the recipient submits to the Federal awarding agency responsible for negotiating the recipient's indirect cost rate or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If the recipient is not required to submit to the cognizant Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

TERMINATION AND ENFORCEMENT

§ 14.60 Purpose of termination and enforcement.

Sections 14.61 and 14.62 set forth uniform suspension, termination and enforcement procedures.

§ 14.61 Termination.

(a) Awards may be terminated in whole or in part only if paragraph (a)(1), (2) or (3) apply.

(1) By the Grants Officer, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Grants Officer with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

Office of the Secretary, Commerce

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- (3) By the recipient upon sending to the Grants Officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Grants Officer determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraph (a)(1) or (2).

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in §14.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

**§ 14.62 Enforcement.**

(a) *Remedies for noncompliance.* If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Grants Officer may, in addition to imposing any of the special conditions outlined in §14.14, take one or more of the following actions, as appropriate in the circumstances:

(1) Temporarily withhold payments of funds pending correction of the deficiency by the recipient or more severe enforcement action by the Grants Officer after coordination with the DoC operating unit.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) *Hearings and appeals.* In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.
- (c) *Effects of suspension and termination.* Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if paragraphs (c) (1) and (2) of this section apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) *Relationship to debarment and suspension.* The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the DoC implementing regulations (see §14.13) at 15 CFR part 26.
- Subpart D—After-the-Award Requirements**

**§ 14.70 Purpose.**

Sections 14.71 through 14.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

**§ 14.71 Closeout procedures.**

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Grants Officer may approve extensions when requested by the recipient.

(b) Unless the Grants Officer authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the

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terms and conditions of the award or in agency implementing instructions.

(c) The Grants Officer shall authorize and the DoC shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated funds that the DoC has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A-129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Grants Officer shall make a settlement for any upward or downward adjustments to the Federal share of costs after close-out reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with §§14.31 through 14.37.

(g) In the event a final audit has not been performed prior to the closeout of an award, the DoC shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

§ 14.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following:

(1) The right of the DoC to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in § 14.26.

(4) Property management requirements in §§14.31 through 14.37.

(5) Records retention as required in § 14.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the DoC and the recipient, provided the responsibilities of the recipient referred to in §14.73(a), including those for property management as applicable, are considered and provisions made for con-

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tinuing responsibilities of the recipient, as appropriate.

§ 14.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Grants Officer may reduce the debt by:

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the recipient; or

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the DoC shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, "Federal Claims Collection Standards."

APPENDIX A TO PART 14—CONTRACT PROVISIONS

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of \$2000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the DoC operating unit.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than \$2000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) and as supplemented by Department of Labor regulations (29 CFR part 5, “Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction”). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the DoC operating unit.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)*—Where applicable, all contracts awarded by recipients in excess of \$2000 for construction contracts and in excess of \$2500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.)* and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended—Contracts and subgrants of amounts in excess of \$100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the DoC operating unit and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration’s List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, “Debarment and Suspension” as implemented by DoC regulations at 15 CFR part 26. This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

PART 15—LEGAL PROCEEDINGS

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9903.201–5 Waiver

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(a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(iv) Agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an OMB Circular A-21 accounting principle amendment which, on becoming effective after the date of contract award, requires the Contractor to make a change to the Contractor's established cost accounting practices.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS or a CAS rule or regulation in 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such in-

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clusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201-4 shall be inserted; and

(2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201-1.

(End of clause)

[57 FR 14153, Apr. 17, 1992; 57 FR 34079, 34167, Aug. 3, 1992; 57 FR 43776, Sept. 22, 1992, as amended at 58 FR 58802, Nov. 4, 1993; 58 FR 65556, Dec. 15, 1993; 59 FR 48568, Sept. 22, 1994; 59 FR 55755, Nov. 8, 1994; 61 FR 39361, July 29, 1996; 62 FR 31295, June 6, 1997; 65 FR 36770, June 9, 2000; 65 FR 37471, June 14, 2000]

9903.201-5 Waiver

(a) The head of an executive agency may waive the applicability of the Cost Accounting Standards for a contract or subcontract with a value of less than \$15 million, if that official determines, in writing, that the business unit of the contractor or subcontractor that will perform the work—

(1) Is primarily engaged in the sale of commercial items; and

(2) Would not otherwise be subject to the Cost Accounting Standards under this Chapter.

(b) The head of an executive agency may waive the applicability of the Cost Accounting Standards for a contract or subcontract under exceptional circumstances when necessary to meet the needs of the agency. A determination to waive the applicability of the Cost Accounting Standards by the agency head shall be set forth in writing, and shall include a statement of the circumstances justifying the waiver.

(c) The head of an executive agency may not delegate the authority under paragraphs (a) and (b) of this section, to any official below the senior policymaking level in the agency.

(d) The head of each executive agency shall report the waivers granted

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under paragraphs (a) and (b) of this section, for that agency, to the Cost Accounting Standards Board, on an annual basis, not later than 90 days after the close of the Government's fiscal year.

(e) Upon request of an agency head or his designee, the Cost Accounting Standards Board may waive all or any part of the requirements of 9903.201-4(a), Cost Accounting Standards, or 9903.201-4(c), Disclosure and Consistency of Cost Accounting Practices, with respect to a contract subject to the Cost Accounting Standards. Any request for a waiver shall describe the proposed contract or subcontract for which the waiver is sought and shall contain—

- (1) An unequivocal statement that the proposed contractor or subcontractor refuses to accept a contract containing all or a specified part of a CAS clause and the specific reason for that refusal;
  - (2) A statement as to whether the proposed contractor or subcontractor has accepted any prime contract or subcontract containing a CAS clause;
  - (3) The amount of the proposed award and the sum of all awards by the agency requesting the waiver to the proposed contractor or subcontractor in each of the preceding 3 years;
  - (4) A statement that no other source is available to satisfy the agency's needs on a timely basis;
  - (5) A statement of alternative methods considered for fulfilling the need and the agency's reasons for rejecting them;
  - (6) A statement of steps being taken by the agency to establish other sources of supply for future contracts for the products or services for which a waiver is being requested; and
  - (7) Any other information that may be useful in evaluating the request.
- (f) Except as provided by the Cost Accounting Standards Board, the authority in paragraph (e) of this section shall not be delegated.

[65 FR 36770, June 9, 2000]

**9903.201-6 Findings.**

(a) *Required change*—(1) *Finding.* Prior to making any equitable adjustment under the provisions of paragraph (a)(4)(i) of the contract clause set forth

in 9903.201-4(a) or 9903.201-4(e), or paragraph (a)(3)(i) of the contract clause set forth in 9903.201-4(c), the Contracting Officer shall make a finding that the practice change was required to comply with a CAS, modification or interpretation thereof, that subsequently became applicable to the contract; or, for planned changes being made in order to remain CAS compliant, that the former practice was in compliance with applicable CAS and the planned change is necessary for the contractor to remain in compliance.

(2) *Required change* means a change in cost accounting practice that a contractor is required to make in order to comply with applicable Standards, modifications, or interpretations thereto, that subsequently become applicable to an existing CAS-covered contract due to the receipt of another CAS-covered contract or subcontract. It also includes a prospective change to a disclosed or established cost accounting practice when the cognizant Federal agency official determines that the former practice was in compliance with applicable CAS and the change is necessary for the contractor to remain in compliance.

(b) *Unilateral change*—(1) *Findings.* Prior to making any contract price or cost adjustment(s) under the change provisions of paragraph (a)(4)(ii) of the contract clause set forth in 9903.201-4(a) or 9903.201-4(e), or paragraph (a)(3)(ii) of the contract clause set forth in 9903.201-4(c), the Contracting Officer shall make a finding that the contemplated contract price and cost adjustments will protect the United States from payment of increased costs, in the aggregate; and that the net effect of the adjustments being made does not result in the recovery of more than the estimated amount of such increased costs.

(2) *Unilateral change by a contractor* means a change in cost accounting practice from one compliant practice to another compliant practice that a contractor with a CAS-covered contract(s) elects to make that has not been deemed desirable by the cognizant Federal agency official and for which the Government will pay no aggregate increased costs.



# Contracts as Government Exhibits

# Contracts as Government Exhibits (GX)

G X 1 P r o p o s a l P r e p a r a t i o n

Contracts in  
Government Exhibits  
GX1 Proposal  
Preparation Kit

**U. S. Department of Commerce  
National Institute of Standards and Technology  
Advanced Technology Program  
100 Bureau Drive, Stop 4701  
Administration Building 101, Room A413  
Gaithersburg, MD 20899-4701**

**Telephone: 1-800-ATP-FUND or 1-800-287-3863\***

**Fax: 301-926-9524 or 301-590-3053**

**E-Mail: [atp@nist.gov](mailto:atp@nist.gov)**

**Internet: <http://www.atp.nist.gov>**

**\* ATP toll-free "hotline" number with recorded messages on current status of ATP, workshops being held, or to request that a name be added to the ATP mailing list.**

## FOREWORD

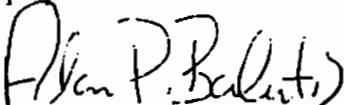
As the recently appointed Director of the Advanced Technology Program (ATP), it is my pleasure to provide you with this new version of the *ATP Proposal Preparation Kit* (Kit). This Kit provides you with all the necessary guidelines for developing an ATP proposal during fiscal year 2001. All individuals who are currently on the ATP mailing list will receive a copy of this Kit as well as other announcements. If you are not on our mailing list and wish to be added, please contact our ATP toll-free "hotline" number 1-800-ATP FUND or 1-800-287-3863.

All around us, innovation is affecting the way we live. It's spurring economic growth, creating jobs, improving our quality of life and putting American companies in the lead in many markets. But innovation takes time, resources and a commitment. The ATP strives to bridge the gap between the research lab and the marketplace. It accelerates the development of innovative technologies that promise significant commercial payoffs and widespread benefits for the U.S. economy and society. Through the ATP, government and industry share a common commitment to the future -- leveraging public sector funds with those of the private sector to support projects that impact and transform businesses, industries, and lives.

This revised Kit has been streamlined and reduced by more than 50 percent to ease the burden on potential proposers. One major change is in the ATP proposal submission requirements which provides for a multiple stage and sequential review process. This multiple stage process has been instituted to reduce the amount of information required at one time. Required information may be submitted at different stages as determinations are made that a proposal has high merit based on the established selection criteria.

If this is your introduction to the ATP, I encourage you to visit our Web home page located at <http://www.atp.nist.gov>. The home page provides general information about the ATP, resources that can help you develop a proposal, a searchable database of previously funded ATP projects, and much more.

New opportunities bring us new challenges. I look forward to receiving many creative and innovative proposals.



Alan P. Balutis  
Director  
Advanced Technology Program  
National Institute of Standards and Technology

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## CHAPTER 1: QUESTIONS & ANSWERS ABOUT THE ATP

### A. GENERAL INFORMATION

#### 1. What is the Advanced Technology Program (ATP)?

The Advanced Technology Program (ATP) began in 1990 to provide cost shared funding to industry to accelerate the development and broad dissemination of challenging, high-risk technologies that promise significant commercial payoffs and widespread benefits for the nation. This unique government-industry partnership accelerates the development of emerging or enabling technologies, leading to revolutionary new products, industrial processes and services that can compete in rapidly changing world markets. The program challenges industry to take on higher risk projects with commensurately higher potential payoff to the nation than they would otherwise. The ATP statutory authority is 15 U.S.C. Sec. 278n (<http://www4.law.cornell.edu/uscode/15/278n.text.html>). The ATP implementing regulations may be found in 15 CFR Part 295 ([http://www.access.gpo.gov/nara/cfr/cfrhtml\\_00/Title\\_15/15cfr295\\_00.html](http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_15/15cfr295_00.html)).

#### 2. Who may apply?

A single for-profit company and/or industry-led joint venture. See section B. of this chapter for more details.

#### 3. How can I receive funding?

You must submit a proposal to ATP in response to a solicitation/request for proposals published by ATP. Annual notices are published in the *Federal Register* announcing the availability of ATP funds. Additionally, a specific solicitation/request for proposals is published in the *Commerce Business Daily (CBD)*.

#### 4. What are the guidelines for preparing an ATP proposal?

Detailed instructions for preparing an ATP proposal are provided in Chapter 2 of this Kit. Proposal submission requirements have been modified to a multiple stage and sequential review process to reduce the amount of information required at one time. Required information may be submitted at different stages as determinations are made by ATP that a proposal has high merit based on the selection criteria. We call these stages in the review process "gates." A proposal must pass through each gate in order to receive funding.

#### 5. How many gates are there in this new proposal submission process?

There are four "gates" as follows:

**Gate 1:** The proposer submits detailed information to address the scientific and technological merit selection criterion. Additionally, the proposer submits preliminary information to address the selection criterion on the potential for broad-based economic benefits. If the information submitted is determined to have high merit, ATP notifies the proposer and requests that the required additional information be submitted for consideration in **Gate 2**.

**Gate 2:** The proposer submits more detailed information to address the potential for broad-based economic benefits selection criterion and detailed budget data. If the information submitted is determined to

have high merit, ATP notifies the proposer of its selection as a semi-finalist and the proposal proceeds to Gate 3.

**Gate 3:** The proposer is requested to submit required forms and additional documentation, as necessary, and may be invited to NIST for an oral review. If ATP determines, based on all the information received, that the proposal has sufficiently high merit to be funded, the proposal is considered a finalist and proceeds to Gate 4.

**Gate 4:** Final award processing and issuance, if selected.

**6. Will confidential/proprietary information in my proposal be protected?**

**Yes.** Information obtained by ATP or other Department of Commerce offices on a confidential basis on business operations and trade secrets possessed by any company or joint venture will be protected by the government to the full extent of the law. Such information will be withheld from disclosure under the Freedom of Information Act.

**7. Where can I seek help with preparing my proposal?**

- a. Visit ATP's website at <http://www.atp.nist.gov/atp/resources.htm> which provides links to State agencies and to other resources, both public and private, that can help proposers develop ATP proposals.
- b. Visit the **ATP ALLIANCE NETWORK** website at <http://www.atp.nist.gov/alliance> which provides useful tools for creating and managing R&D partnerships. The website offers interactive forums such as the **Collaboration Bulletin Board**, through which potential proposers can anonymously post their interest in finding a partner, and the **R&D Alliances Forum**, where individuals can exchange their ideas and questions about high-risk R&D alliances.
- c. The **NIST Manufacturing Extension Partnership (MEP)** is a nationwide network of locally managed extension centers whose sole purpose is to provide small and medium-sized manufacturers with the help they need to succeed. The centers provide guidance to high technology companies seeking resources and teaming relationships that help with commercialization efforts. To contact an MEP Center, call 1-800-MEP 4 MFG (1-800-637-4634) or visit MEP's website at <http://www.mep.nist.gov>.

**8. Does ATP hold any public meetings or conferences to assist in proposal preparation?**

**Yes.** ATP holds one or more proposers' conferences. These meetings provide general information regarding the ATP, tips on preparing good proposals, and an opportunity for questions and answers. Proprietary technical discussions of specific proposals should not take place at this public meeting. Attendance is not required, and many successful ATP recipients have not attended a proposers' conference. However, those who have attended have said they found the session helpful. Each ATP competition announcement will include information regarding the time and place of proposers' conferences. If you plan to attend a conference, please complete and return the ATP Proposers' Conference Registration Form (see Exhibit 1). Receipt of your advance registration form will assist us in making adequate provisions for attendees.

NIST staff will not critique individual proprietary project ideas during the time they are being developed by a proposer. However, we will at any time answer questions you may have about such things as our project

selection criteria, selection process, eligibility requirements, cost sharing requirements, and the general characteristics of a good ATP project.

**9. Is there a deadline for submitting an ATP proposal?**

Yes. Once an ATP solicitation/request for proposals is published in the *Commerce Business Daily (CBD)*, you may submit your proposal until the date specified in the *CBD*.

**10. Where do I submit proposals?**

National Institute of Standards and Technology  
Advanced Technology Program  
100 Bureau Drive, Stop 4701  
Administration Building 101, Room A413  
Gaithersburg, MD 20899-4701

**11. Who should I contact if I have questions?**

Barbara Lambis by phone 301-975-4447, fax 301-869-1150, or e-mail [barbara.lambis@nist.gov](mailto:barbara.lambis@nist.gov).

**B. ELIGIBILITY**

**1. Who is eligible to apply?**

Single for-profit companies and industry-led joint ventures may apply for ATP funding as described below:

- a. **Single Company.** A single small, medium, or large for-profit company. (Note: A legal entity such as an LLC is considered a single company.) The single company must be substantially involved in the R&D, with a leadership role in programmatically steering the project, and facilitate definition of the research agenda.
  - b. **Joint Venture.** At least two separately owned for-profit companies, both of which are substantially involved in the R&D and both contributing towards the cost sharing requirement. Most ATP joint ventures consist of companies who formally agree to collaborate on the R&D and establish an effective plan to commercialize the technology if successful. In addition to two separately owned for-profit companies, the joint venture may include additional for-profit companies and other organizations which may or may not contribute funds (other than Federal funds) to the project and may perform research.
- 2. Can universities, governmental laboratories, and independent research organizations participate?**

Universities, governmental laboratories (excluding NIST laboratories), and/or independent research organizations may participate in an ATP project in the following two ways:

- a. As subcontractors to a single company or to a joint venture. (Note that if a subcontractor(s) performs the bulk of the R&D tasks, the proposal stands little chance of being selected.)

- b. As additional partners in a joint venture. Any one of these three types of organizations can serve as the catalyst to organize a joint venture. However, of these three organizations, only an independent research organization may (i.e., a university or governmental laboratory may not) submit a proposal on behalf of a joint venture and administer the project provided that the following two conditions are met:
- (1) As stipulated above, the joint venture includes at least two separately owned for-profit companies, both of which are substantially involved in the R&D and both contributing towards the cost sharing requirement, and
  - (2) The joint venture is industry-led, i.e., the industrial partners must be substantially involved in the R&D, with a leadership role in programmatically steering the project, facilitate definition of the research agenda, and commit to the commercialization plans if the technology is successfully developed.

### 3. Can a foreign-owned company apply for ATP funding?

A U.S.-incorporated company (subsidiary) of a foreign-owned parent company which is incorporated in another country may apply if the company meets the conditions in the ATP legislation (15 U.S.C. Sec. 278n.(d)(9) and regulations (15 CFR 295.3). Prior to final award, a foreign eligibility finding will be made by NIST which involves the collection of evidence that the (1) company's participation in the ATP is in the economic interest of the United States; and the country of incorporation of the participant's parent company: (2) affords U.S.-owned companies opportunities comparable to those afforded to any other company to participate in government-funded programs similar to ATP; (3) affords U.S.-owned companies local investment opportunities comparable to those afforded to any other company; and (4) affords adequate and effective protection for the intellectual property rights of U.S.-owned companies. NIST accepts responsibility for making this finding. Information relating to this finding need not be provided in your proposal other than details of the role of the foreign-owned company in the project.

If your company is neither U.S.-owned nor a U.S.-incorporated company that has a parent company incorporated in another country, your company is NOT eligible for ATP funding. A company owned by one or more non-U.S. citizen green card holders, which is not a U.S.-incorporated company with a parent company incorporated in another country, may apply for an ATP award but NO funding can be received by the company unless the ownership issue is resolved consistent with the ATP legislation prior to final award selections. If a proposal submitted by a non-U.S. citizen is selected as a semi-finalist, this issue will be raised at an oral review or earlier to determine whether this issue has been resolved, e.g., the owner has since become a U.S. citizen or ownership has been transferred to a U.S. citizen or citizens. More detailed information on the rules for foreign participation can be found on ATP's website at <http://www.atp.nist.gov/eao/ir-6099/contents.htm>.

## C. FUNDING AND COST SHARING

### 1. How much funding can I receive and do I have to provide cost sharing?

- a. A single company can receive up to \$2 million for R&D activities for up to 3 years. ATP funds may only be used to pay for direct costs for single company recipients. Single company recipients are responsible for funding all of their overhead/indirect costs. Small and medium size companies applying as single company proposers are not required to provide cost sharing of direct costs; however, they may

pay a portion of the direct costs if they wish, in addition to all indirect costs. Large companies applying as single company proposers, however, must cost share at least 60 percent of the yearly total project costs (direct plus all of the indirect costs). A large company is defined as any business, including any parent company plus related subsidiaries, having annual revenues in excess of \$3.037 billion. (Note that this number will likely be updated annually and will be noted in future annual announcements of availability of funds and ATP Proposal Preparation Kits.)

Now and then a start-up company applying to ATP claims that they have no indirect costs and that the ATP project, if funded, would be the *only* project the company would have; therefore, all costs would be direct. When this assertion is made, it raises two concerns for ATP:

- (1) If the company's accounting system has been designed by a Certified Public Accounting (CPA) firm consistent with generally accepted accounting principles, then certain expense items should fall into indirect cost categories, even for a new start up company with only one project. To do otherwise suggests to ATP that either the company is inexperienced about its fiscal affairs or the company has no intent of carrying on any business other than the ATP project -- either of which is of concern to ATP. (For example, at some point the company will begin to engage in commercialization activities which cannot be paid for by ATP.)
- (2) ATP projects are supposed to be industry/government cost shared projects. A company proposing to recover 100 percent of the project costs from ATP is violating the spirit of the ATP statute because the company has no funds of its own at risk. In addition, if the company is not sharing in the risk of the investment with ATP, it gives the appearance that it is not very committed to moving the technology into the marketplace. A proposal claiming no indirect costs, therefore, is unlikely to receive an ATP award.

- b. A joint venture can receive funds for R&D activities for up to 5 years with no funding limitation other than the announced availability of funds. Joint ventures must cost share more than 50 percent of the yearly total project costs (direct plus indirect costs).

If a proposal is selected for funding, the cost sharing amount will be made a part of the award; must meet the criteria stipulated in the administrative requirements of 15 CFR Part 14, *Uniform Administrative Requirements for Grants and Cooperative Agreements with Institutions of Higher Education, Hospitals, other Non-Profit and Commercial Organizations* (<http://www.doc.gov/oebam/cfr14.htm>); must be allowable under the applicable Federal cost principles; and is subject to audit.

## 2. How does ATP define cost sharing?

Cost sharing means that portion of project costs not borne by the federal government. Sources of revenue to satisfy the required cost share include cash and in-kind contributions. Cash contributions can be from recipient, state, county, city, or other non-federal sources. In-kind contributions can be made by recipients or non-federal third parties (except subcontractors working on any ATP project) and include but are not limited to equipment, research tools, software, and supplies. Except as specified in CFR 295.25, the value of in-kind contributions shall be determined in accordance with 15 CFR 14.23. The value of in-kind contributions will be prorated according to the share of total use dedicated to the ATP project. ATP restricts the total value of in-kind contributions that can be used to satisfy the cost share by requiring that such contributions not exceed 30 percent of the non-federal share of the total project costs. The allowability of cost sharing costs are determined in accordance with applicable federal cost principles.

### **3. Can independent research and development (IR&D) funds be used as cost sharing?**

The fundamental expectation for cost sharing is that the proposer's share of the ATP project costs be funded from non-federal sources, such as retained earnings or profit, not funds included as an indirect expense which is subsequently allocated for reimbursement under federally-funded procurement contracts, grants, and other agreements. Recovering the proposer's cost share as part of its IR&D/General & Administrative (G&A) allocation to other federally-funded projects would be contrary to the level of financial commitment expected of proposers by the ATP statute.

Proposers **MAY NOT** classify the non-federal share of the ATP project costs as an IR&D expense that is subsequently allocated, either as a separate cost or as an element of a G&A cost pool, to federally-funded procurement contracts, grants, or other agreements.

Proposers **MAY** allocate IR&D or G&A costs, which include IR&D as an element, to an ATP project, provided that the IR&D/G&A rate applied to the ATP project is a Federally-approved indirect cost rate.

### **4. Are there any projects ATP will not fund?**

- a. Straightforward improvements of existing products or product development.
- b. Projects that are predominately basic research.
- c. Pre-commercial scale demonstration projects where the emphasis is on demonstration that some technology works on a large scale or is economically sound rather than on R&D.
- d. Projects involving military weapons R&D or R&D that is of interest only to some mission agency rather than to the commercial marketplace.
- e. Projects that ATP believes would likely be completed with or without ATP funds in the same time frame or nearly the same time frame.

### **5. What types of costs are unallowable?**

Regardless of whether they are allowable under the Federal cost principles, the following are unallowable under ATP:

- a. Construction of new buildings or extensive renovations of existing laboratory buildings. However, construction of experimental research and development facilities to be located within a new or existing building are allowable provided that the equipment or facilities are essential for carrying out the proposed scientific and technical project and are approved by the NIST Grants Officer.
- b. Indirect costs for single company recipients are unallowable for reimbursement with Federal funds and must be absorbed by the company. Note that with large businesses submitting proposals as single company proposers, indirect costs absorbed by the large business may be used to meet the cost sharing requirement.
- c. Profit, management fees, interest on borrowed funds, or facilities capital cost of money.



- d. Bid and proposal (B&P) costs, tuition costs, marketing surveys or commercialization studies, and general business planning unless they are incorporated into a Federally approved indirect cost rate. (However, a university participating in an ATP project as a subcontractor or as a joint venture partner may charge ATP for tuition remission or other forms of compensation in lieu of wages paid to university students working on ATP projects only as provided in OMB Circular A-21, section J.41. In such cases, tuition remission would be considered a cash contribution rather than an in-kind contribution.)
- e. Single company and joint venture participants may not subcontract to another part of the same company or to another company with identical or nearly identical ownership. Work proposed by another part of the same company or by another company with identical or nearly identical ownership should be shown as funded through interorganizational transfers that do not contain profit. Interorganizational transfers should be broken down in the appropriate budget categories.

#### 6. Will ATP fund research performed outside the United States?

While the ATP is not precluded from funding research performed outside the U.S. by either U.S.-owned or foreign-owned companies/entities (including foreign subcontractors outside the U.S.), the ATP selection criterion used to evaluate how economic benefits must accrue to the U.S. would normally result in proposals involving significant research performed outside the U.S. to be scored low. Additionally, the proposed use of a foreign subcontractor must be justified. This justification must include why the work or services cannot be equivalently performed or obtained in the United States.

### D. SELECTION CRITERIA AND SELECTION PROCESS

#### 1. What selection/evaluation criteria are used to select ATP proposals for funding?

As stipulated in 15 CFR 295.6, the evaluation criteria used to select a proposal for funding and their respective weights are listed below. No proposal will be funded unless ATP determines that it has scientific and technological merit and that the proposed technology has strong potential for broad-based economic benefits to the nation. Additionally, no proposal will be funded that does not require Federal support, that is product development rather than high risk R&D, that does not display an appropriate level of commitment from the proposer, or does not have an adequate technical and commercialization plan. **Scoring the full weight of the selection criterion under the Scientific and Technological Merit will not make up for major flaws within the Potential for Broad-Based Economic Benefits selection criterion and vice versa.** Detailed guidance on how to address the selection criteria in your proposal is provided in Chapter 2.

- a. **Scientific and Technological Merit (50%).** [*This selection criterion has two critical components: 1) Scientific/Technical Rationale and (2) R&D Plan.*] The proposed technology must be highly innovative. The research must be challenging, with high technical risk. It must be aimed at overcoming an important problem(s) or exploiting a promising opportunity. The technical leverage of the technology must be adequately explained. The research must have a strong potential for advancing the state of the art and contributing significantly to the U.S. scientific and technical knowledge base. The technical plan must be clear and concise, and must clearly identify the core innovation, the technical approach, major technical hurdles, the attendant risks, and clearly establish feasibility through adequately detailed plans linked to major technical barriers. The plan must address the questions of “what, how, where, when, why, and by whom” in substantial detail. The Program will assess the proposing team’s relevant experience for pursuing the technical plan. The team carrying out the work must demonstrate a high

level of scientific/technical expertise to conduct the R&D and have access to the necessary research facilities.

- b. **Potential for Broad-Based Economic Benefits (50%).** [*This selection criterion has three critical components: 1) National Economic Benefits; 2) Need for ATP Funding; and 3) Pathway to Economic Benefits.*] The proposed technology must have a strong potential to generate substantial benefits to the nation that extend significantly beyond the direct returns to the proposing organization(s). The proposal must explain why ATP support is needed and what difference ATP funding is expected to make in terms of what will be accomplished with the ATP funding versus without it. The pathways to economic benefit must be described, including the proposer's plan for getting the technology into commercial use, as well as additional routes that might be taken to achieve broader diffusion of the technology. The proposal should identify the expected returns that the proposer expects to gain, as well as returns that are expected to accrue to others, i.e., spillover effects. The Program will assess the proposer's relevant experience and level of commitment to the project and project's organizational structure and management plan, including the extent to which participation by small businesses is encouraged and is a key component in a joint venture proposal, and for large company single proposers, the extent to which subcontractor/subrecipient teaming arrangements are featured and are a key component of the proposal.

## 2. How are proposals selected for funding?

All proposals are selected based on a peer-review process, as described in 15 CFR 295.4. Proposals judged through Gates 1 and 2 to have high merit based on the established selection criteria receive further consideration and are referred to as "semi-finalists." Semi-finalist proposers may be invited to NIST for an oral review (Gate 3) of their proposals, and in some cases site visits may be required. Semi-finalist proposals are then ranked, and the Selecting Official selects funding recipients based upon the ranking, the availability of funds, adherence to the ATP selection criteria, and an appropriate distribution of funds among technologies and their applications. NIST reserves the right to deny awards in any case where a reasonable doubt exists regarding a proposer's ability to comply with ATP requirements or to handle Federal funds responsibly. All funding decisions are final and cannot be appealed. NIST reserves the right to negotiate the cost and scope of the proposed work with the proposers that have been selected to receive awards. For example, NIST may request that the proposer delete from the scope of work a particular task that is deemed by NIST to be product development or otherwise inappropriate for ATP support.

## 3. What are the most common reasons for failure of an ATP proposal?

- a. Lack of clear definition of technical barriers which prevent progress on the commercial front. Low-scoring proposals often fail to answer the question "What technical issue is preventing you from exploiting this technology for this class of applications?"
- b. Lack of an innovative approach to defeat recognized technical barriers.
- c. Lack of detail in the technical plan or failure to clearly describe how the paths to innovation will be accomplished.

**NOTE:** The deficiencies identified in a. through c. above are evident in proposals that commit simply to work on the technical barriers and provide no evidence of innovation in how these barriers or goals will be addressed. Your technical approach will be rated inadequate if it is primarily Edisonian (trial-and-error) or if it is based merely on standard engineering or scientific practice.



- d. Too general a description of the market opportunity with no specific market segment analysis (size, sales, potential customers, and competitors).
- e. Lack of detail on the approach to be taken to commercialize the technology after the ATP project ends, or failure to address market opportunity.
- f. Unconvincing case for the need for ATP, or the difference that ATP can make.

## **E. INTELLECTUAL PROPERTY**

### **1. Who retains title to patentable inventions arising from an ATP-funded project?**

Pursuant to the ATP statutory and regulatory authorities, 15 U.S.C. Sec. 278n(d)(11)(A) and 15 CFR 295.2, title to any inventions arising from an ATP-funded project must be held by a for-profit company or companies incorporated or organized in the United States. A university, governmental laboratory, or independent research organization cannot retain title to patents, although such organizations can receive mutually agreeable payments (either one-time, or continuing) from the company or companies holding title to the patent. A for-profit corporation organized by a university may be considered a for-profit company for the purpose of retaining title to patents arising from an ATP award. In such cases, documentation of the corporation's for-profit status must be provided in the proposal. If your organization plans to be involved in an ATP project, and if your organization is not a for-profit company, make sure your legal department can accept this provision. The ATP cannot waive this legislatively mandated provision. Title to any such invention shall not be transferred or passed, except to a company organized in the United States, until the expiration of the first patent obtained in connection with such invention.

### **2. Does the Federal government have any rights to patentable inventions arising from an ATP-funded project?**

The United States reserves a nonexclusive, nontransferable, irrevocable paid-up license, to practice or have practiced for or on behalf of the United States any patentable invention arising from an ATP award, but shall not, in the exercise of such license, publicly disclose proprietary information related to the license. Additionally, the Federal government has march-in-rights in accordance with 37 CFR 401.14(j).

## **F. HUMAN AND ANIMAL SUBJECTS**

### **1. Will ATP fund projects involving human subjects?**

Yes. Research involving human subjects must be in compliance with applicable federal regulations and NIST policies for the protection of human subjects. Human subjects research involves interactions with human subjects or data, images, tissue and/or cells/cell lines (including those used for control purposes) from human sources. Research involving human subjects may include activities such as the use of image and/or audio recordings of people, taking surveys or using survey data, using databases containing personal information, and many tasks beyond those within traditional biomedical research. Detailed information regarding the use of human subjects involved in research and required documentation may be requested by calling ATP toll free at 1-800-287-3863 or by visiting ATP's website at <http://www.atp.nist.gov>.

**2. We are not a biotech company; does our research involve human subjects?**

It could. Manufacturing, electronic, and information technology projects may utilize human subjects in research that falls within the regulations. The use of human subjects in research is not limited to biological-based studies; there are numerous examples of non-medical research proposals that may utilize human subjects or data with personal information about people. For example, a computer software company may propose to have a new web-based curriculum reviewed by a group of volunteers and solicit feedback on such things as usability, design and content. The use of certain types of volunteers to review the web-based system (or the curriculum in a software format) may constitute the use of human subjects as defined in Federal regulations. This type of research will require the submission of certain documents to NIST.

**3. Will ATP fund projects involving animal subjects?**

Yes. Research involving animal subjects must be in compliance with applicable Federal regulations and NIST policies for the protection of animal subjects. Vertebrate animal (e.g., mammals, birds, fish, etc.) research involves animals that are being cared for, euthanased, or used by the project participants to accomplish research goals, teaching, or testing. The regulations do not apply to animal tissues purchased from commercial processors or tissue banks, or to uses of pre-existing images of animals (e.g., a wildlife documentary, or pictures of animals in newscasts, etc.). Detailed information regarding the use of animal subjects involved in research and required documentation may be requested by calling ATP toll free at 1-800-287-3863 or by visiting ATP's website at <http://www.atp.nist.gov>.

## CHAPTER 2: GUIDELINES FOR PREPARING ATP PROPOSALS

*(NOTE: Proposals that deviate substantially from these guidelines or that omit substantial information may be found unresponsive and may not be considered for funding.)*

### A. PROPOSAL FORMAT

The following format must be followed for submission of the initial proposal, as well as subsequent proposal-related documents from the proposer.

1. **Bindings.** Bind each of the required bound copies of the proposal securely. Bindings which permit the proposal to lie flat while being read are preferred. Loose-leaf ring binders are NOT acceptable.
2. **Double-Sided Copy.** Print on both sides of the paper (front to back counts as two pages).
3. **Electronic Proposal Submission.** ATP expects to begin piloting on-line submission of proposals in 2001. Details will be made available later.
4. **Facsimile (FAX) Submissions.** Proposals, late documentation, errata sheets, etc., submitted by facsimile (fax) will not be accepted.
5. **Figures and Diagrams.** If your originals are in color and you are submitting black and white copies, make sure plots are still understandable and plot lines are differentiable and identifiable.
6. **Font.** Use an easy-to-read font (e.g., Times New Roman, 12 point) minimum.
7. **Line Spacing.** Use normal default line spacing, i.e., a minimum of single space.
8. **Margins.** Use one inch top, bottom, left, and right margins.
9. **Number of Copies.** Provide an original signed bound proposal plus 15 (1 unbound and 14 bound) copies for a total of 16 copies.
10. **Page Limit.** Page limits for the different parts of a proposal are stipulated in **Exhibit 2**.
11. **Page Numbering.** Number pages sequentially.
12. **Paper Size.** Use 21.6 x 27.9 cm (8½ x 11 inch) paper.
13. **Proposal Language.** Proposals must be written in English.
14. **Table of Abbreviations.** Include a table which defines abbreviations likely unfamiliar to the reader. You do not need to define common abbreviations, e.g., U.S. for United States, ATP for Advanced Technology Program, DoD for Department of Defense, cm for centimeter, etc.
15. **Table of Contents.** A table of contents is not required.

16. **Typed Document.** Proposals must be typed. Handwritten proposals will be rejected.
17. **Usage of Metric/System International (SI) Units.** Use metric/SI units; however, English units may be put in parentheses.

## **B. PROPOSAL FORMS AND OTHER DOCUMENTS**

The following forms and other documents are required in order to be considered for funding. Please note that they are not all required at the time of initial proposal submission. The stages for submission of the documents are noted below and summarized in Exhibit 2. All of the required forms with instructions are included in this Kit as tear-out pages (see Exhibits). As noted, some forms are required from single company proposers only, some from joint ventures only, and some from both.

### **1. Single Company Only.**

- a. **Form NIST-1262 Pages 1 & 2 - Single Company Advanced Technology Program Proposal Cover Sheet** (see Exhibit 3) must be submitted at the time of initial proposal submission (**Gate 1**). **Page 1 of this form serves as the cover for the proposal; therefore, no other cover should be included.** Use the list of ATP Technology Area Codes included in this Kit (see Appendix A) to complete item 2 on this form. The authorized company representative who signs the form must have delegated fiduciary authority. By signing this form, the company representative certifies the company's commitment to pay all indirect costs and, if included as additional cost share, any direct costs; verifies the certification statements on the form; and verifies the accuracy of the proposal. The signature also signifies that the company representative has coordinated with top management within his/her own company about their commitment to the proposed project. Additionally, by signing the form, the company representative acknowledges that the proposal is being submitted with the agreement that NIST may use non-Government reviewers, if necessary. (Such reviewers are screened to eliminate conflicts of interest and must sign non-disclosure statements.)
- b. **Form NIST-1262 Page 3 - Estimated Multi-Year Budget - Single Company** (see Exhibit 4) must be submitted at the time of initial proposal submission (**Gate 1**). Items completed must reflect estimated costs for each year of the proposed project, as well as totals for the entire project.
- c. **Form NIST-1262 Page 4 - Subcontracts** (see Exhibit 5) must be submitted at the time of initial proposal submission (**Gate 1**).

### **2. Joint Venture Only.**

- a. **Form NIST-1263 Pages 1 & 2 - Joint Venture Advanced Technology Program Proposal Cover Sheet** (see Exhibit 6), must be submitted at the time of initial proposal submission (**Gate 1**). **Page 1 of this form serves as the cover for the proposal; therefore, no other cover should be included.** Use the list of ATP Technology Area Codes included in this Kit (see Appendix A) to complete item 2 on this form. The authorized company representative who signs the form must have delegated fiduciary authority. By signing this form, the company representative certifies the commitment of cost sharing, verifies the certification statements on the form, and verifies the accuracy of the proposal. The signature also signifies that the company representative has coordinated with top management within his/her own company and all companies/organizations described as joint venture partners about their commitment and cost sharing to the proposed project. Additionally, by signing the form, the authorized company

representative acknowledges that the proposal is being submitted with the agreement that NIST may use non-Government reviewers, if necessary. (Such reviewers would be screened to eliminate conflicts of interest and will sign non-disclosure statements.)

- b. Form NIST-1263 Page 3 - Estimated Multi-Year Budget - Joint Venture (see Exhibit 7), must be submitted at the time of initial proposal submission (Gate 1). Items completed must reflect estimated costs for each year of the proposed project as well as totals for the entire project.
- c. Form NIST-1263 Page 4 - Other Joint Venture Participants (see Exhibit 8), must be submitted at the time of initial proposal submission (Gate 1) to identify the joint venture participants (excluding the organization submitting the proposal).
- d. NIST-1263 Page 5 - Subcontracts (see Exhibit 9), must be submitted at the time of initial proposal submission (Gate 1).
- e. Joint Venture Agreement must be submitted in draft (unexecuted) prior to an oral review (Gate 3) so you should be thinking about negotiating this agreement as you write the proposal. The draft Joint Venture Agreement must include at a minimum:
  - 1) Authorization for one of the joint venture participants (a legal entity, not an individual person) to bind all of the other participants to the terms and conditions of the NIST award and to administer the NIST award on behalf of all of the participants;
  - 2) Treatment of intellectual property, i.e., who will own what, including provisions granting the required licenses to the government; and
  - 3) Agreement that the ATP award terms and conditions take priority over Joint Venture Agreement terms and conditions.

Although the draft Joint Venture Agreement need not be signed at the time of an oral review, if the proposal is selected for funding, the Joint Venture Agreement must be finalized and executed by all joint venture participants prior to award issuance. For your convenience, we have developed a sample Joint Venture Agreement and Intellectual Property Plan for your use which may be requested by calling ATP toll free at 1-800-287-3863 or by visiting ATP's website <http://www.atp.nist.gov>. The sample Joint Venture Agreement includes important information; however, it is not meant to be a sole Joint Venture Agreement model. If a joint venture wants to develop its own Joint Venture Agreement, it may do so, provided the minimum provisions mentioned above are included.

Based on feedback from companies involved in ATP, some issues that are most often raised by the companies' legal departments in negotiating the joint venture agreement include:

- 1) Who will hold title to intellectual property?
- 2) How are revenue streams to be divided?
- 3) What indemnification provisions will be acceptable to all parties?
- 4) Who will be the spokesperson for the joint venture?
- 5) Who authorizes licensing agreements?
- 6) Who handles the billing to NIST and brings issues to NIST's attention?

- 7) What will happen during the course of the project if one party drops out and/or another party wishes to join?
- 8) Who will coordinate writing the quarterly reports to NIST?
- 9) Who will track progress against technical milestones to bring issues to the attention of the joint venture and NIST?
- 10) In what capacity is a governmental laboratory participating? If as a joint venture partner, is the governmental laboratory willing to execute the joint venture agreement? (NOTE: If not willing to execute the joint venture agreement, the governmental laboratory may participate as a subcontractor under a separate agreement (e.g., a CRADA) with the joint venture administrator.)

While each joint venture can write its own Joint Venture Agreement, there are certain provisions noted in the Kit to which all joint venture partners **MUST** agree before ATP can make an award. For example, ATP's legislation states that title to intellectual property developed with ATP funds must be held by a company or companies incorporated in the United States.

Before investing a large effort in planning technical work for a joint venture, companies are urged to obtain a legal review of the sample Joint Venture Agreement in this Kit by all participants. If it appears likely that the kinds of provisions contained in the sample Joint Venture Agreement will be contentious, we urge you to consider very carefully whether the joint venture is feasible. If there are questions, your legal staff may contact the Office of the NIST Counsel at 301-975-2803.

We strongly recommend that the person who signs the ATP proposal be someone at a high enough level of the company to be able to deal effectively with the kinds of legal and policy concerns that are necessary to execute a successful Joint Venture Agreement. It is often helpful if this same individual signs the Joint Venture Agreement on behalf of the company if the project is selected for funding. This individual must coordinate with top management within his/her own company and participating companies/organizations about their commitment and proposed cost sharing to the proposed project.

### 3. Single Company and Joint Venture.

- a. **Standard Form 424B, Assurances - Non-Construction Programs (see Exhibit 10), must be submitted prior to an oral review (Gate 3).** The authorized company representative who signs the form must have delegated fiduciary authority. By signing this form, the company representative certifies compliance with the standard assurances. **NOTE:** If a joint venture proposal is selected as a semi-finalist, the SF 424B must be completed by each of the other joint venture participants and submitted to ATP prior to an oral review (Gate 3).
- b. **Form CD-511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying (see Exhibit 11), must be submitted prior to an oral review (Gate 3).** All financial assistance proposers must certify that they: are not suspended or debarred from participating in Federal programs, will provide a drug-free workplace, and have not or will not use Federal appropriated funds to engage in prohibited lobbying activities. **NOTE:** If a joint venture proposal is selected as a semi-finalist, the Form CD-511 must be completed by each of the other joint venture participants and submitted to ATP prior to an oral review (Gate 3).
- c. **Standard Form LLL, Disclosure of Lobbying Activities (see Exhibit 12) must be submitted prior to an oral review (Gate 3) if the proposer engages in lobbying.** The Form CD-511 defines the circumstances under which this additional reporting requirement applies. Read the Form CD-511 to

determine if you are required to submit the Standard Form LLL. **NOTE:** If a joint venture proposal is selected as a semi-finalist, the Form SF-LLL must be completed by the other joint venture participants, if applicable, and submitted to ATP prior to an oral review (**Gate 3**).

- d. Form CD-346, Applicant For Funding Assistance (see Exhibit 13) must be completed by the appropriate personnel and submitted prior to an oral review (**Gate 3**). The following individuals are required to complete the form:
- 1) Technical and business project managers
  - 2) Chief financial manager
  - 3) Key officer who will have fiduciary responsibility for the award or who has authority to speak for and/or commit the recipient in the management of the award and/or expend funds
  - 4) Grant/Contract Manager

This information is used to conduct a name check on the key individuals to determine whether there is any criminal or adverse finding which would have a negative effect on their participation in the award. Officials of state, local governments, accredited colleges, and universities acting on behalf of their respective entities in applying for assistance are exempt from the name check requirement. Additionally, elected officials of state and local governments who are serving in capacities other than their elected capacities when applying for assistance are exempt.

## C. EXECUTIVE SUMMARY

A one to two page Executive Summary briefly highlighting the major sections of the Project Narrative must be submitted at the time of the initial proposal submission (**Gate 1**). The summary should address the ATP selection criteria detailed in section D of this chapter as follows:

1. Scientific and Technological Merit
  - Technical Rationale
  - Technological Innovation
  - High Technical Risk and Feasibility
  - R&D Plan
2. Potential for Broad-Based Economic Benefits
  - National Economic Benefits
  - Need for ATP Funding
  - Pathway to Economic Benefits

## D. PROJECT NARRATIVE

The project narrative in the initial proposal submission must provide detailed information to address the scientific and technological merit selection criterion and include preliminary information to address the potential for broad-based economic benefits selection criterion (**Gate 1**). If ATP determines that the information in the initial proposal has high merit, the proposal will proceed to **Gate 2** of the review process, and the proposer will be notified by ATP to provide more detailed information to address the potential for broad-based economic benefits selection criterion (see Appendix B). This revised proposal submission process is designed to reduce the burden on our proposers. The project narrative (both detailed information to address the scientific and technological merit selection criterion and the preliminary information to address

the potential for broad-based economic benefits selection criterion) required in your initial proposal is limited to a total of 24 pages for a single company and 35 pages for a joint venture (see Exhibit 2).

1. **Scientific and Technological Merit:** Detailed information must be provided with your initial proposal to address this selection criterion. This detailed information required with your initial proposal submission should be no more than 20 pages for a single company and 30 pages for a joint venture, out of the total page count of 24 and 35 respectively.

Describe the technical aspects of your project. Explaining what you will do, how you will do it, when, where, and why. The scientific and technological merit is determined by assessing the innovations in the technology, technical risk and feasibility, and the quality of your research and development (R&D) plan. The proposed technology must be highly innovative. The research must be challenging, with high technical risk. It must be aimed at overcoming an important problem(s) or exploiting a promising opportunity. The research must have strong potential for advancing the state of the art and contributing significantly to the U.S. scientific and technical knowledge base. The project team must be qualified to conduct the R&D and must have access to the necessary research facilities.

The technical narrative should clearly communicate both the technical barriers or challenges that your project will tackle and your innovative solution(s) to overcoming these barriers. One approach that works well is to summarize these two points in the previous Executive Summary in a couple of paragraphs and/or bullet points, followed by a more detailed narrative (described below) that provides the rationale supporting your assessment of high technical risk, innovation and feasibility of approach.

In the end, the narrative should provide a reviewer who is reasonably skilled in the associated, technical field(s) with enough information to answer the following questions:

- a. What is the level of technical risk involved in your proposed work?
- b. What is the amount of novelty/innovation inherent in reaching your proposed solution(s)?
- c. How will the project team handle the technical/managerial problems that they will likely encounter?

Many successful proposals discuss the first two questions in one section (*Technical Rationale*) and address the last question in a separate section (*R&D Plan*).

**Technical Rationale.** State and quantify the technology development targets of the project. Discuss how the attainment of these targets will deliver all the technical capabilities that will be needed to realize the economic benefits described in the economic section of your proposal.

Describe the technical challenges and assess the probability of success of the project approach(es). Characterize the major technical tasks with respect to technical risk, and highlight the high technical risk tasks. "High technical risk" is understood to mean *embodying technical challenges that display significant recognized uncertainty of success by experts in the field(s)*. Risk may be high in developing one or more single innovations, integrating technologies, or both. The ATP expects that in high technical-risk projects, surmounting the technical challenge should result in a dramatic change in the future direction of technology. (Remember that the mission of ATP is to help companies overcome high-risk technical barriers, where potential economic benefits are large.)

You must demonstrate that your technical approach is feasible. Feasibility is assessed by whether or not there is a sound scientific foundation or rationale for the proposed approach, based on early research



results, research evidence in the open literature or sound theoretical thinking. The ATP will not fund ideas that have no scientific basis or plausibility, or projects that are predominantly basic discovery science.

Your proposal must convince reviewers that your project involves a high degree of innovation. Innovation may relate to the objectives of research, or to the approach to achieving those objectives; that is, innovation may be in what you want to accomplish, as well as in how you intend to do it. Identify key technical barriers that stand in the way of developing or exploiting the new technology, and show that your approach to overcoming those barriers is particularly innovative relative to alternative approaches being pursued by your foreign and domestic competitors. Ignoring the existing body of knowledge and on-going work by others may cause reviewers to assume that you are not knowledgeable about existing work or that your work may duplicate existing efforts.

If your research approach or objective appears to require predominantly straightforward, routine data gathering, or just standard engineering practice, your project will not be funded. Projects that do not involve new innovations (e.g., creation of voluntary consensus standards, data gathering/ handbook preparation, testing of materials, or unbounded research aimed at basic discovery science) will not be funded. Projects that are simply a follow-on or continuation of tasks previously funded in ATP projects from essentially the same proposing team will not be funded.

Projects with high technical risk and innovation offer the potential for leveraging advancements into other technical arenas. Explain how your technical targets compare to the state of the art and current industry practice against a clear baseline from which you are starting. This explanation will tend to be a summary of the technical risk and highlight the need for significant innovation to have a broad impact in the economy. You are strongly encouraged to summarize your targets, the key technical variables associated with your approach, the technical barriers, and your innovative approaches in a table. An example of a table format highlighting possible variables from three different types of projects follows for your convenience:

Key Variables*	Project Technical Targets	Current Practice	Associated Barriers	Innovative Approaches
catalyst selectivity	95%	25%	side conversion to acetaldehyde	new metallocene
% of speech recognized	99.9%	70%	range of pronunciations	new approach to recognizing inflection
non-invasive glucose sensor	improved accuracy and precision over current method metrics	invasive <i>in vitro</i> methods	calibration and reliability	non-invasive <i>in vivo</i> device

**\*NOTE:** Most projects have several key variables, not just one.

Estimate how far along your technology development will be at the end of the ATP project relative to where you predict your competition will stand at that same time. (Note that this will emphasize the competitive situation from a technical perspective, whereas the potential for broad-based economic benefits information in your proposal will address the competitive situation from a business perspective.)

Summarize the impact, or technical leverage, of overcoming the high technical risks with your proposed innovation(s). Technical leverage is understood to mean that an advance in one area of technology will have a larger impact on other areas of technology, or on a broad spectrum of technology applications. Will the project contribute to the U.S. technology base even if it is not completely successful either technically or commercially? In what ways? How will you facilitate the diffusion of impacts to other technology areas?

**R&D Plan.** Since your proposal (if funded) essentially becomes the basis for your “statement of work,” a good R&D plan is critical for maintaining best practices in project management. Many unsuccessful proposals have emphasized meritorious technical goals and provided only a vague roadmap on how to get there. The technical plan should explain how you intend to reach the technical objectives, should address all the anticipated technical problems, and should describe how these problems will be handled. With respect to technical merit, the most common reason for failure of ATP proposals is that the R&D plan is not described in enough clarity or with enough detail for reviewers to assess the degree of innovation in the proposed tasks. It is not adequate simply to describe the established technical barriers and provide only an overview of the research path using standardized methodologies of scientific or engineering practice.

Discuss how the proposed work will be organized into tasks, and how the tasks are interrelated. Explain the technical rationale for the major tasks and describe, in a quantitative manner, the approaches to be followed to generate, test, and interpret information. Provide sufficient detail. For example, do not simply say, “We will measure the properties of the key materials.” What materials? What properties? Over what range of variables? Using what techniques? How will data be used in achieving the goals? Define clear, quantitative milestones and major “go, no-go” decision points for major tasks that are clearly linked to the budget. Key decision points and alternatives should be discussed within the context of a decision point strategy. (“If this happens, we will do A, but if that happens, we will do B.”). For the most important and difficult problems, describe contingency plans. The chronological relationship of tasks, milestones and decision points should be illustrated in a Gantt chart or table such as the figure below. The first year’s work should be well thought out and described in more detail than work in subsequent years.

**Figure: Project Plan, Milestones, and Budget**

Major Project Tasks	Project Time					Total Funds \$K	Major Milestone Description
	Y1	Y2	Y3	Y4	Y5		
Task 1 Description	<div><div></div></div> <div>◇</div>					\$K	◇: Complete, demonstrate, validate....
Task 2 Description		<div><div></div></div> <div>◇ (1)</div>	<div><div></div></div> <div>◇ (2)</div>			\$K	◇ (1): Complete, demonstrate, validate.... ◇ (2): Complete, demonstrate, validate....
Task 3 Description		<div><div></div></div> <div>◇</div>				\$K	◇: Complete, demonstrate, validate....

Task 4 Description					◇	\$K	◇: Complete, demonstrate, validate....
Task 5 Description					◇	\$K	◇: Complete, demonstrate, validate....
Funding Totals	\$K	\$K	\$K	\$K	\$K	\$K	

For each year, provide a brief statement of the project’s anticipated, overall accomplishments. These accomplishments should characterize what objectives the company needs to achieve in order to maintain a high level of commitment to the project. These annual accomplishments should briefly (2-3 sentences maximum) define how the project would have benefits to the taxpayer by funding year should additional out-year funding not become available (i.e., severability statements). The statement of accomplishments may take the form of a description of how the state of the art will be extended by the end of the year, or of the technical capabilities required to keep the project on track toward achieving the overall end-of-project goals.

If a project is selected for funding, annual accomplishments and milestones can be modified, based on the research results if the adjustments are consistent with the project goals originally proposed. If there are especially critical decision points where you will reassess your willingness to continue the project, indicate those points and the conditions or metrics under which you would want to withdraw and end the project.

Describe how the plan will foster a team approach and ensure effective communication among team members. Show how your R&D team will be aware of and take into account views and constraints of suppliers, considerations of manufacturability, requirements of customers, regulatory concerns, safety issues, environmental impacts, etc. Describe how all of the necessary scientific, engineering, and business disciplines will be brought into the R&D planning. Discuss how you will ensure that the cross-disciplinary knowledge and capabilities required for the project’s success will be available when needed. Discuss special issues such as workforce training requirements associated with the new technology, environmental impact, or regulatory issues.

Discuss the technical qualifications and experience of technical personnel and describe critical facilities and equipment necessary for conducting the R&D work. More general discussion of technical staff and facilities and equipment will be required under *Experience and Qualifications* if you are asked to submit the more detailed information required if you pass Gate 1.

- 2. **Potential for Broad-Based Economic Benefits.** The preliminary information required in your initial proposal to address the potential for broad-based economic benefits selection criterion is limited to the questions below. If your initial proposal is determined by ATP to have high merit, your proposal will advance to Gate 2 and you will be notified by ATP to submit more detailed information to address this selection criterion (see Appendix B) and given a reasonable time period to prepare your submission. Please do not provide the detailed information in your initial proposal submission. Although you are not required to provide the detailed information in the initial proposal submission, you are strongly encouraged to begin preparing this information to ensure that sufficient time is allocated to finalize it and obtain required approval(s) within your organization to submit it to ATP when it is due. The preliminary information required below with your initial

proposal submission should be no more than four pages for a single company and five pages for a joint venture, out of the total page count of 24 and 35, respectively.

#### **National Economic Benefits**

- a. What business opportunities does the proposed technology address and why are they of economic importance to the proposer? To the nation broadly? Explain how successful pursuit of these opportunities will benefit your customers, competitors and/or others in your industry, end users, other industries, and the general public.
- b. What is the business/economic advantage of the proposed technology over current ways or incremental plans to resolve the same problems or needs your technology will address? If possible, describe and quantify the magnitude of improvement over current approaches and how this improvement enables commercial and national advantage.
- c. Who are the potential users of the technology? How big are the markets currently and what are their growth trends? How might the markets change if the proposed technology were available?

#### **Need for ATP Funding**

- a. What efforts have you made to get internal funding and/or external private financing? (Note: 'None' is not a satisfactory answer.)
- b. How will ATP funding change the scope, scale, and/or timing of your research effort in this technical area?

#### **Pathway to Economic Benefits**

- a. Briefly describe your initial target application and your commercialization strategy for bringing the technology into the marketplace, including any use of strategic alliances.
- b. Briefly describe how the technology will be broadly diffused.
- c. Describe the business experience of the company and staff.

### **E. BUDGET NARRATIVE (BUDGET DATA)**

As stated earlier in this Kit, Form NIST-1262, pages 1-4, or NIST-1263, pages 1-5, are required in your initial proposal submission (Gate 1). If your initial proposal is determined by ATP to have high merit to warrant further consideration, a detailed budget narrative (budget data) will be required along with the more detailed information to address the potential for broad-based economic benefits selection criterion (Gate 2). The required budget data worksheets are included in this Kit (see Exhibit 14).

## APPENDIX B: REQUIRED DETAILED INFORMATION TO ADDRESS ATP SELECTION CRITERION ON POTENTIAL FOR BROAD-BASED ECONOMIC BENEFITS

If your initial proposal with detailed information addressing the scientific and technological merit selection criterion and preliminary information addressing the potential for broad-based economic benefits selection criterion is determined to have high merit, you will be requested to provide more detailed information to address the potential for broad-based economic benefits selection criterion. Please **do not** provide the detailed information below in your initial proposal submission. You will be notified by ATP if you are to submit the detailed information below, and given a reasonable time period to prepare your submission. Although you are not required to provide the detailed information below with your initial proposal submission, you are strongly encouraged to begin preparing this information to ensure that sufficient time is allocated to finalize it and obtain required approval(s) within your organization to submit it to ATP when it is due. This revised proposal submission process is designed to reduce the burden on our proposers.

**FORMAT:** If you are requested to provide the more detailed information to address the potential for broad-based economic benefits selection criterion, all of the proposal format requirements stipulated in Chapter 2 for the initial proposal also apply for the information required below with the exception of the page limit. For the information below, the page limit is **15** for a single company and **20** for a joint venture.

**COVER SHEET:** For single company proposers, pages 1 & 2 of the Form NIST-1262 (Single Company Advanced Technology Program Proposal Cover Sheet) and for joint venture proposers, pages 1 & 2 of the Form NIST-1263 (Joint Venture Advanced Technology Program Proposal Cover Sheet) must be included with the detailed information below. The proposer should include the proposal number assigned by ATP at the time of the initial proposal submission in the top right hand box labeled "(FOR ATP USE ONLY)." Please do not include any other cover sheet or letter with this submission.

### Potential for Broad-Based Economic Benefits.

The mission of ATP is to fund research projects with strong potential for delivering large economic benefits to the nation, beyond the returns to the proposer. While ATP funds cannot be used for product development or for other commercialization activities, proposals must show how the research will lead to economic growth. To help ATP with this evaluation, we ask you to provide:

#### (National Economic Benefits)

1. A convincing case that large economic benefits to the U.S. will result from successful development of the technology, including benefits to the applicant, and more importantly, benefits to other organizations, users, industries, and the general public;

#### (Need for ATP Funding)

2. Evidence that these benefits would not occur in a timely manner to meet market opportunity in the absence of ATP funding; and

#### (Pathway to Economic Benefits)

3. A strong framework of a commercialization plan for achieving the benefits described in this plan needs to address the following elements:

- a. How you will bring your technology to the marketplace;
- b. The mechanisms by which the technology will be broadly diffused;
- c. Evidence that you have the necessary business experience and qualifications (or the ability to acquire them);
- d. A convincing case that you are committed to the R&D and ultimate commercialization; and
- e. An appropriate management plan and organizational structure for carrying out the tasks of the project and eventually commercializing the results.

Your plans for commercialization and diffusion provide the critical link between your R&D plan and the large economic benefits to the nation that would be enabled by your project. The following sections provide more detail on each of the above critical elements.

**National Economic Benefits.** In preparing this section, think about what business opportunities are being addressed by the technology you are proposing to develop and why they are of economic importance, not just to you but also to others in the nation. Consider how the successful pursuit of these opportunities will benefit your customers, end users, others in your industry -- even your competitors -- other industries, and the general public. You need to make a strong case for government use of taxpayer funds for the proposed research by demonstrating large benefits to the nation beyond those received by you, the proposer.

Think about opportunities in the immediate future and broader impacts in the more distant future, including those that are less tangible. Some of the economic benefits can be quantified; others present a greater challenge to define with precision. For example, you successfully develop a new technology through an ATP award that saves automobile owners an average of \$200 per car per year on gasoline, but consumers may only be willing to pay \$50 per year for such a feature. The difference of \$150 per car per year is an example of an economic benefit to each automobile owner that can be readily quantified. This difference -- \$150 multiplied by the estimated number of automobiles that will be using your technology -- is an example of benefits to the nation beyond what you will receive. Less easy to quantify might be the potential environmental impacts of a technology that leads to lower emissions of hazardous air pollutants. But you could still develop reasonable estimates using published information about the amount of emissions with current technologies, assessing the portion of these emissions that your technology can address, and identifying the percentage improvements enabled by your technology. More difficult to estimate might be the economic consequences of reduced dependence on imported oil. Quantification can be particularly elusive where the technology potentially enables entirely new markets to develop. In such a situation, provide evidence of the need for the products or capabilities enabled by your proposed project, a clear description of these capabilities and of changes that might come about in existing markets as a result of these capabilities, and whatever quantitative and qualitative measures are expected to illustrate impact.

Be clear in your discussion about the marginal difference that your technology makes. If possible, identify the "added value" of ATP's financial assistance in realizing the economic benefits of your proposed project. Research efforts take a number of years to complete and often include significant investments in additional research and development subsequent to the ATP award -- and a number of additional years before the economic benefits you are describing are realized. Perhaps your company, or a competitor, will undertake a part of the research or achieve some part of the resulting capabilities without ATP funding. Thus, some portion of the economic benefits you have identified may be realized whether or not you receive an ATP award. Please state what they are. Indicate what aspects of the project, if any, will likely be undertaken without ATP funding, and with what timing. Assess the economic benefits with and without ATP funding.

There is no single “successful formula” for presenting the national economic benefits of ATP projects, but consider the following:

1. Does the project enable future economic activity because it is “pathbreaking” (opens up new and revolutionary possibilities), “infrastructural” (provides a foundation for an entire industry or supports the development of a broad set of technologies), or “multi-use” (has multiple and distinct applications)?
2. Does the project enable performance and quality gains and cost savings to your organization? To others? Does it offer health, safety, or environmental benefits?
3. Will your competitors benefit? Downstream customers and end users? Other industries? Other researchers?
4. Does the project have potential for synergy and complementarity with what others are doing?
5. Are there opportunities for others to use your technology for applications that you do not wish to pursue, but might be made available to them through patent licensing, publication, or some other mechanism? How will these organizations be made aware of these opportunities? Are these organizations participating in the project in some way?

In the **Pathway to Economic Benefits** section, you will be asked to link the economic benefits you have described here under **National Economic Benefits** to the plans and strategies you and/or others will employ to bring these economic benefits about.

**Need for ATP Funding.** Explain why your project needs public funds. Why is full private funding not available or not possible? If you are a small company, why are internal funds not devoted to this project, and what efforts have you made to seek external private financing? If you are a large company (that is, a business unit or division in a large company), explain why this project does not match the profile for internal R&D funding priority.

What makes this project special and deserving of public support? How does it differ from other projects in your company’s R&D portfolio that are fully financed with private resources? If the project is “too risky” to obtain private funding, explain what about the project makes it too risky for your R&D portfolio. Be specific. If you think that your company cannot capture enough of the benefit or profit from this project to warrant the investment, explain why. Are there technology characteristics or business characteristics that make it difficult for the firm doing the R&D to capture the returns?

**Pathway to Economic Benefits.** If your R&D effort is successful, how will the technology be brought to market, or otherwise enter into use? Ultimately, by what pathways will your technology generate economic value and provide the large economic benefits described above to the nation?

**Commercialization.** The ATP expects that you, the proposer, will take a major role in introducing the technology into the marketplace rapidly through commercialization activities. You must demonstrate an understanding of the market; fairly assess your strengths, weaknesses, and opportunities from a competitive standpoint; and show that you have at least a preliminary business plan and strategy for introducing the technology into the marketplace.

Describe developments related to the competitiveness of your technology in the U.S. and abroad, and assess the window of opportunity for your technology. Is there an urgency in a market sense for the technology to be developed within the proposed timeframe of your ATP project? Who are your competitors, and what are they doing in this research area? How are competing technologies developing and progressing? Are you in the lead? Behind? Trying to catch up? Planning a leap-frog strategy? Will you get there in time? Will you be able to make a difference?

Present your commercialization strategy and demonstrate that you have a coherent business plan. Identify potential commercial applications of your technology by which economic benefits described in the previous section will be achieved. Highlight which application(s) will be your primary focus. Provide a detailed description of your strategy for bringing this initial application(s) to market. Discuss the role of strategic alliances, marketing arrangements, plans for technology licensing, and your approach to intellectual property protection. Identify your most likely direct customers and pathway to the end users.

Discuss business or market risks that you expect to face, and describe your approach to managing those risks. Describe how varying degrees of technical success with regard to the R&D plan and how changing business conditions might affect your ability to commercialize the technology. The ATP recognizes that inability to achieve full technical success, as well as unanticipated developments in fast-moving markets, can change opportunities and alter plans. Discuss the possibility of adjustments to the commercialization plan in response to different or changing conditions.

It is important to emphasize that while ATP funding decisions are based in part on a consideration of the opportunities for commercial success, ATP funds are NOT to be used for commercialization activities. ATP funding is only provided for research and development activities.

**Broader Diffusion.** Consistent with its definition of economic benefits, ATP views the "pathway to economic benefits" as both the proposer's direct commercialization path to customers and subsequent customers downstream and more indirect paths to the full spectrum of potential economic benefits to the nation.

In addressing this broader set of pathways, consider how benefits of your technology will reach others outside the proposing organization(s) and your customers. How will your contributions to knowledge diffuse beyond your organization to benefit other researchers working on other research projects in the same or other industry sectors? Will you publish research results? Will you patent, whereby once your patent is issued information in it becomes public? Will you seek licensing partners in other industries or for other applications than are of primary interest to you? Will you include user groups in your project teams? Will you form alliances with others in your supply chain, or with other firms in different industry sectors? Do you see potential for beneficial synergistic or complementary effects on others? Overall, what will you do to increase the likelihood that your technology will diffuse beyond your company or your industry, so that your technology will have the widest possible impact and greatest benefit to the economy?

**Company's Commitment, Project's Organizational Structure, and Project Management.** Describe your commitment to the project and subsequent commercialization. What resources are you bringing to the project? What priority will you give to this work in relation to other company activities? How does this project fit within the core competency of the organization? Why is this project strategically important for the company? Provide evidence of support from higher management within your company, if applicable. Provide evidence of interest and support from potential customers or suppliers, and evidence of support from current or future investors, if applicable. If you have commitments from a state, regional, or local agency that has agreed to contribute cost sharing funds, please indicate the nature of that arrangement and give evidence of the



## APPENDIX A: ATP TECHNOLOGY AREA CODES

## BIOTECHNOLOGY

B0100 - Animal & Plant Biotechnology  
B0200 - Biomolecular & Biomimetic Materials  
B0300 - Bioprocessing/Biomedical Engineering  
B0400 - Bioinformatics  
B0600 - Diagnostic and Therapeutic  
Biotechnology  
B0700 - Marine Biology  
B9900 - Other Biotechnology

ELECTRONICS/COMPUTER HARDWARE/  
COMMUNICATIONS

E0100 - Semiconductors  
E0200 - Electronics Systems  
E0300 - Microelectromechanical Technology  
E0500 - Computer Hardware  
E0600 - Microelectronic Fabrication  
Technology  
E0700 - Communication for Data, Voice, Video  
E0800 - Electronic Instrumentation/Sensors &  
Control Systems  
E0900 - Optics & Photonics  
E9900 - Other Electronics

## INFORMATION TECHNOLOGY

I0200 - Computer Systems and Software  
Applications  
I0300 - Computer-Aided Design and Testing  
Systems  
I0400 - Imaging & Image Processing  
I0500 - Cognitive Systems  
I0600 - Pattern Recognition  
I0700 - Internet Infrastructure  
I0800 - Security & Biometrics  
I9900 - Other Information/Computers/  
Entertainment

## MANUFACTURING (DISCRETE)

M0100 - Automobile Manufacturing  
M0200 - Aircraft Manufacturing  
M0300 - Other Transportation Manufacturing  
M0400 - Intelligent Control  
M0500 - Machine Tools  
M0700 - Materials Handling  
M0800 - Intelligent Manufacturing  
M0900 - Avionics  
M9900 - Other Discrete Manufacturing  
N0300 - Energy Conversion (Motors, Generators,  
etc.)  
N0500 - Energy Generation/Distribution

## ADVANCED MATERIAL/CHEMICALS

A0500 - Abrasives, Adhesives, Ceramics,  
Coatings, and Composites  
A0600 - Computer-Based Design of Chemical/  
Materials  
A0800 - Polymers Synthesis & Polymer  
Fabrication Technologies  
A1000 - Metals & Alloys  
A1200 - Building/Construction Materials  
A9900 - Other Materials  
H0100 - Separation Technology  
H0200 - Catalysis/Biocatalysis  
H1500 - Food Processing and Preservation  
H9900 - Other Continuous Manufacturing  
(Pulp/Paper, Textiles)  
N0200 - Energy Resources/Petroleum  
N0400 - Energy Storage/Fuel Cell, Battery  
N0600 - Environmental Technologies

## OTHER

Z0000 - Technology Area Code Not Listed  
Above

commitment. For joint ventures, letters of commitment (or excerpts of such letters) verifying the availability of cost sharing funds must be submitted from all participants of the joint venture.

Describe the organizational structure for your project. Describe how R&D staff, management, and manufacturing/product development/commercialization staff will support an integrated R&D and business plan. Identify known weaknesses in organizational structure and how they will be overcome.

Describe the project management plan. Describe responsibilities and reporting relationships. Identify who is responsible for major technical tasks and major commercialization activities. Does the project manager have sufficient authority to carry out the project? Is the management structure sufficiently robust that the project can be completed even if key personnel changes are necessary? Who in senior management is interested in this project?

If you are applying as a joint venture, address the following questions: Why was the joint venture structured this way? Why did these particular companies come together? What is the role of each participant and why is it important? Do the participants possess all of the required skills to complete the proposed work? How will each participant focus independently on commercial activities?

For joint ventures, indicate the extent of participation by small businesses and describe their importance to the project. Joint ventures should aim where appropriate to include companies of diverse size, including smaller companies, and possibly other organizations, such as universities and national laboratories.

For large company single proposers, indicate the extent to which subcontractor teaming arrangements are an important feature of the project. Explain how subcontractor relationships with universities, national laboratories, smaller companies, or others may increase the likelihood of public benefits.

For all proposers, identify subcontractor/supplier/collaborator relationships, and describe their importance to the success of the project. Note that ATP recipients are expected to use subcontractors/suppliers/collaborators located in the United States to the greatest extent possible. Substantial foreign participation without credible justification is discouraged. If foreign participants are proposed, the proposer should explain why U.S. sources are not appropriate in view of project goals and how the foreign participants selected maximize U.S. economic benefit.

***Experience and Qualifications.*** Describe the quality and appropriateness of technical and business staff assigned to the project, and the amount of time each individual will allocate to the project. Briefly highlight education and experience of key personnel. (Present a summary table with two columns specifying for each person: 1) name, project responsibility, and percent time allocation to the project; and 2) education, and relevant experience.)

Discuss relevant past performance of project participant organizations. Describe previous company accomplishments in commercialization of technology. Describe other unique characteristics or capabilities of participant organizations.

Describe the adequacy of company facilities and equipment, and other technical or administrative resources, including relevant resources of all project participants, subcontractors, and other collaborators. If facilities or equipment required for the project are not owned or controlled by the proposing organizations, describe what arrangements have been made to ensure adequate facilities and equipment.

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If your company is less than 10 years old, state the year(s) in which your company was formed, and provide a brief company history. For joint-venture proposals, state the year(s) of formation of any principal company less than 10 years old; also indicate whether the joint venture has formed with the purpose of proposing to ATP, or if it is a previously existing joint venture.

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List significant Federal R&D awards (if any) within the past five years in the same general technical area. Briefly describe the work and your accomplishments and note the agency and responsible Principal Investigator and Federal project manager. Explain how this research relates to the work proposed to ATP.

List previous ATP awards or other proposals currently pending ATP review. Be sure to complete blocks 4.A. and 4.B. on the Form NIST-1262 or NIST-1263. If you have received a previous ATP award in a closely related technical area, describe how your current proposed project differs from the previously awarded project. ATP will not fund an extension of a previous project, so the newly proposed project must be substantially different from the previously funded project.

Provide information about the current ownership of your company and the past history and performance of your organization(s). Present a table as illustrated below, with data for the preceding three years (or for the number of years the organization has existed, if less than three years).

Financial and Employment Information

	Year <i>T-3</i>	Year <i>T-2</i>	Year <i>T-1</i>
<b>Income Statement</b>			
Revenue			
Cost of Sales (Cost of Goods Sold)			
R&D Expenditures			
Net Income Before Taxes			
Net Income			
<b>Balance Sheet</b>			
Total Assets			
Total Liabilities			
Net Worth (Owner's Equity)			
<b>Employment Information</b>			
Total Number of Full-time Employees			
Total Number of Part-time Employees			
Total Number of Full-time R&D Personnel			
Total Number of Part-time R&D Personnel			

Large companies with multiple divisions or business units may provide financial and employment information for the fully consolidated company. Clearly identify the entity to which the information applies. Include an organization chart or equivalent explanation indicating the position of the project proposer/participant within the larger company to which the financial and employment information applies.

## EXHIBITS - TEAR-OUT DOCUMENTS

The tear-out documents listed below and which follow this page are referenced and discussed in this Kit. However, the actual Exhibit number reference has intentionally been omitted from the following tear-out documents so they may be removed from this Kit and used in preparing your proposal. These documents are also available on the Internet at the site indicated.

1. ATP Proposers' Conference Registration Form (<http://www.atp.nist.gov/atp/kit-00/exhibit1.htm>)
2. ATP Proposal Checklist (<http://www.atp.nist.gov/atp/kit-00/exhibit2.htm>)
3. Form NIST-1262 (Pages 1 & 2), Single Company Advanced Technology Program Proposal Cover Sheet (<http://www.atp.nist.gov/atp/kit-00/forms.htm>)
4. Form NIST-1262 (Page 3), Estimated Multi-Year Budget - Single Company (<http://www.atp.nist.gov/atp/kit-00/forms.htm>)
5. Form NIST-1262 (Page 4), Subcontracts (<http://www.atp.nist.gov/atp/kit-00/forms.htm>)
6. Form NIST-1263 (Pages 1 & 2), Joint Venture Advanced Technology Program Proposal Cover Sheet (<http://www.atp.nist.gov/atp/kit-00/forms.htm>)
7. Form NIST-1263 (Page 3), Estimated Multi-Year Budget - Joint Venture (<http://www.atp.nist.gov/atp/kit-00/forms.htm>)
8. Form NIST-1263 (Page 4), Other Joint Venture Participants (<http://www.atp.nist.gov/atp/kit-00/forms.htm>)
9. Form NIST-1263 (Page 5), Subcontracts (<http://www.atp.nist.gov/atp/kit-00/forms.htm>)
10. Standard Form 424B, Assurances - Non-Construction Programs (<http://www.whitehouse.gov/OMB/grants/index.html>)
11. Form CD-511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying (<http://www.atp.nist.gov/atp/kit-00/forms.htm>)
12. Standard Form-LLL, Disclosure of Lobbying Activities (<http://www.whitehouse.gov/OMB/grants/index.html>)
13. Form CD-346, Applicant For Funding Assistance (not available on Internet at this time)
14. Budget Data (<http://www.atp.nist.gov/atp/kit-00/forms.htm>)

## ATP PROPOSERS' CONFERENCE REGISTRATION FORM

If you plan to attend an ATP Proposers' Conference, please complete and return this registration form. Only one registration form per organization is required. Note: There is no registration fee.

Conference Date: \_\_\_\_\_

Conference Location (City): \_\_\_\_\_

Attendee's Name: \_\_\_\_\_

Number of attendees from your organization: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

FAX Number: \_\_\_\_\_

## RETURN REGISTRATION FORM TO:

## BY MAIL:

ATP Proposers' Conference Registration  
National Institute of Standards and Technology  
Advanced Technology Program  
100 Bureau Drive, Stop 4701  
Administration Building 101, Room A413  
Gaithersburg, MD 20899-4701

or

## BY FAX:

301-926-9524 or 301-590-3053

or

## BY TELEPHONE:

1-800-ATP-FUND or 1-800-287-3863

or

## BY WORLD WIDE WEB:

[http://www.atp.nist.gov/atp/reg\\_form.htm](http://www.atp.nist.gov/atp/reg_form.htm)

# ATP PROPOSAL CHECKLIST

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This checklist for the submission of required documents should be used in preparing your ATP proposal. (Note: For research proposals which involve human and/or animal subjects, the required additional human and animal subjects documentation and the Gates for submission are provided in the ATP booklet entitled *Guidelines and Documentation Requirements for Research Involving Human and Animal Subjects* which is available upon request from ATP (1-800-287-3863) or by visiting ATP's website [www://atp.nist.gov](http://atp.nist.gov).

## A. SINGLE COMPANY (plus items in C. and D. below):

- 1. No indirect costs are included in the ATP funds requested.
- 2. If a large company, cost sharing is at least 60 percent of total yearly project costs (direct plus all of the indirect costs).
- 3. Total duration does not exceed 3 years.
- 4. Total ATP funding does not exceed \$2 million.

## B. Joint Venture Only (plus items in C. and D. below):

- 1. Cost sharing is more than 50 percent of total yearly project costs.
- 2. Total duration does not exceed 5 years.
- 3. At least two separately-owned, for-profit companies are substantially involved in the R&D and are providing cost sharing.

## C. Single Company & Joint Venture:

- 1. For the initial proposal (see GATE 1 column below) and additional information (see GATE 2 column below) an original signed bound and 15 copies (1 unbound and 14 bound) for a total of 16.
- 2. Figures in estimated multi-year budgets add up and match with Budget Data worksheets exactly.
- 3. Total value of in-kind contributions does not exceed 30% of non-Federal share of total project costs.
- 4. Letters or excerpts from such letters confirming cost share commitment.
- 5. Following items as required for each of the stages (Gates) in the proposal submission process.

GATE 1 (Initial Proposal)	GATE 2 (Additional Information)	GATE 3 (Prior to Oral Review)
Form NIST-1262 (4 pages) or NIST-1263 (5 pages)	Budget Data	CD-346
Executive Summary	More detailed information to address potential for broad-based economic benefits selection criterion	SF-424B
Detailed information to address the scientific and technological merit selection criterion and preliminary information to address the potential for broad-based economic benefits selection criterion		CD-511
If research involves the use of human and/or animal subjects, please refer to the ATP Booklet entitled <i>Guidelines and Documentation Requirements for Research Involving Human and Animal Subjects</i> .		SF-LLL
		Draft Joint Venture Agreement (JV only)

Proposal Type	GATE 1 (Initial Proposal)	Gate 2 (Additional Information)
Single Company	24 pages  (Approximately 20 pages for detailed information to address the scientific and technological merit selection criterion and approximately 4 pages for preliminary information to address the potential for broad-based economic benefits selection criterion)	15 pages  (Detailed information to address potential for broad-based economic benefits selection criterion)
Joint Venture	35 pages  (Approximately 30 pages for detailed information to address the scientific and technological merit selection criterion and approximately 5 pages for preliminary information to address the potential for broad-based economic benefits selection criterion)	20 pages  (Detailed information to address potential for broad-based economic benefits selection criterion)

The page limits include all text, tables, illustrations, references, resumes, and supporting documents. However, the page limits **EXCLUDE** all forms (NIST-1262, NIST-1263, CD-511, SF-LLL, or SF 424B); Joint Venture Agreement; letters of commitment; Budget Data; and human and/or animal subjects documentation. Pages can be saved by following the suggestions below:

1. List data only for the key people and briefly highlight their education and experience. Do not include lengthy resumes for all people involved in the project.
2. Lists of lengthy publications need not be included. Cite only those references that are particularly relevant to the ATP project. Do not include copies of published papers as appendices.
3. Do not include supplemental material not specifically requested in this Kit, either bound with the proposal or separate.
4. Do not include company sales catalogs, video, or audio tapes.



NIST-1262  
(Rev. 7/2000)  
DAO 203-26U.S. DEPARTMENT OF COMMERCE  
NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

(FOR ATP USE ONLY)

**SINGLE COMPANY ADVANCED TECHNOLOGY PROGRAM  
(ATP) PROPOSAL COVER SHEET**  
(CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER 11.612)

Public reporting burden for this collection of information is estimated to average thirty (30) hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Director, Advanced Technology Program, National Institute of Standards and Technology, 100 Bureau Drive, Stop 4700, Administration Building, Room A333, Gaithersburg, Maryland 20899-4700.

1. COMPETITION NUMBER	2. TECHNOLOGY AREA CODE	3. PROJECT DURATION YEARS MONTHS
-----------------------	-------------------------	-------------------------------------

4.A. OTHER ATP SUBMISSIONS LIST PROPOSAL NUMBER(S) OF SUBSTANTIALLY OVERLAPPING PROPOSAL(S) PREVIOUSLY SUBMITTED	4.B. IF SUBMITTING A CONCURRENT SUBSTANTIALLY OVERLAPPING PROPOSAL TO ANOTHER CURRENT OR PENDING ATP COMPETITION, LIST COMPETITION NUMBER(S)
--	--

5. LEGAL NAME, ADDRESS, AND WEBSITE OF SUBMITTING ORGANIZATION	6. TYPE OF ORGANIZATION (CHECK ALL THAT APPLY) <input type="checkbox"/> PROFIT - SMALL BUSINESS <input type="checkbox"/> PROFIT - LARGE BUSINESS <input type="checkbox"/> PROFIT - MEDIUM BUSINESS <input type="checkbox"/> FOREIGN-OWNED U.S. SUBSIDIARY
--	---

7. EMPLOYER IDENTIFICATION NUMBER (EIN)	8. DUN AND BRADSTREET NUMBER
--	------------------------------

9. NAME OF PRINCIPAL INVESTIGATOR AT SUBMITTING ORGANIZATION (Address required, if different than Item 5)	10. NAME OF GRANT/CONTRACT MANAGER AT SUBMITTING ORGANIZATION (Address required, if different than Item 5)
--	---

TELEPHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

TELEPHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

11. SOURCES OF FUNDS	YEAR ONE	YEAR TWO	YEAR THREE	TOTAL
A. ATP (DIRECT COSTS ONLY)	\$	\$	\$	\$
B. PROPOSER	\$	\$	\$	\$
C. TOTAL (A + B)	\$	\$	\$	\$

12. PROPOSAL TITLE

13. NON-PROPRIETARY PROPOSAL ABSTRACT

14. CERTIFICATION: BY SIGNING THIS PROPOSAL COVER SHEET, I CERTIFY, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT ALL INFORMATION IN THIS PROPOSAL IS TRUE AND CORRECT AND THAT:

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A. THIS PROPOSAL IS NOT REQUESTING FUNDING FOR EXISTING OR PLANNED RESEARCH PROGRAMS THAT WOULD BE CONDUCTED IN THE SAME TIME PERIOD IN THE ABSENCE OF FINANCIAL ASSISTANCE UNDER THE ATP.

B. INDIRECT COSTS PROPOSED IN THIS PROPOSAL ARE INCLUDED UNDER THE PROPOSER'S COST SHARE AND NO INDIRECT COSTS ARE INCLUDED IN ATP SHARE OF COSTS REQUESTED.

C. IF A LARGE BUSINESS, COST SHARING PROPOSED BY THE LARGE BUSINESS IS AT LEAST 60 PERCENT OF EACH YEAR'S TOTAL COSTS.

D. THE TOTAL VALUE OF ANY IN-KIND CONTRIBUTIONS DOES NOT EXCEED 30 PERCENT OF THE COMPANY'S TOTAL COST SHARE.

E. THE FOLLOWING QUESTIONS HAVE BEEN TRUTHFULLY ANSWERED:

YES NO

I. IS THE COMPANY DELINQUENT ON ANY FEDERAL DEBT? (IF YES, EXPLAIN IN ITEM 15, REMARKS.)

☐ ☐

II. WAS PROPOSAL OR VERY SIMILAR PROPOSAL SUBMITTED TO ANOTHER FEDERAL AGENCY? (IF YES, EXPLAIN IN ITEM 15, REMARKS.)

☐ ☐

III. DOES THE COMPANY HAVE A PARENT COMPANY OUTSIDE THE UNITED STATES? (IF YES, IDENTIFY THE PARENT COMPANY AND ITS PLACE OF INCORPORATION IN ITEM 15, REMARKS.)

☐ ☐

IV. IS THE COMPANY MAJORITY OWNED BY INDIVIDUALS WHO ARE NOT CITIZENS OF THE UNITED STATES? (IF YES, EXPLAIN IN ITEM 15, REMARKS.)

☐ ☐

V. IS THE COMPANY SUBJECT TO CONTROL BY INDIVIDUALS WHO ARE NOT CITIZENS OF THE UNITED STATES? (IF YES, EXPLAIN IN ITEM 15, REMARKS.)

☐ ☐

VI. DOES THE PROPOSED R&D INVOLVE THE USE OF HUMAN SUBJECTS AND/OR HUMAN TISSUE, AND/OR HUMAN CELL LINES? (IF YES, EXPLAIN IN ITEM 15, REMARKS, AND INDICATE WHETHER OR NOT THE RESEARCH PLAN HAS BEEN REVIEWED AND APPROVED BY AN INSTITUTIONAL REVIEW BOARD (IRB).)

☐ ☐

VII. DOES THE PROPOSED R&D INVOLVE THE USE OF VERTEBRATE ANIMALS? (IF YES, EXPLAIN IN ITEM 15, REMARKS, AND INDICATE WHETHER OR NOT THE RESEARCH PLAN HAS BEEN REVIEWED AND APPROVED BY AN ANIMAL CARE AND USE COMMITTEE.)

☐ ☐

15. REMARKS (CONTINUE ON A SEPARATE SHEET IF NECESSARY)

6. DESCRIBE WHAT EFFORTS WERE MADE, PRIOR TO APPLYING FOR ATP FUNDING, TO SECURE PRIVATE CAPITAL TO SUPPORT THIS PROJECT WHOLLY.

7. AUTHORIZED COMPANY REPRESENTATIVE (TYPE NAME AND TITLE)

18. TELEPHONE NUMBER

9. SIGNATURE

20. DATE

INSTRUCTIONS FOR FORM NIST-1262 (PAGES 1 & 2): SINGLE COMPANY ADVANCED  
TECHNOLOGY PROGRAM PROPOSAL COVER SHEET

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This form must be submitted with each single company proposal. Every item must be completed to ensure proper review. The authorized company representative who signs the form must have delegated fiduciary authority. By signing this form, the company representative certifies the company's commitment to pay all indirect costs and, if included as additional cost share, any direct costs; verifies the certification statements on the form; and verifies the accuracy of the proposal. The signature also signifies that the company representative has coordinated with top management within his/her own company about their commitment to the proposed project. Additionally, by signing the form, the company representative acknowledges the proposal is being submitted with the agreement that NIST may use non-Government reviewers, if necessary. (Such reviewers are screened to eliminate conflicts of interest and must sign non-disclosure statements.) Proposals are not subject to review by the State under Executive Order 12372. Note: In addition to the certification on item 14, ATP proposers must comply with the SF-424B, Assurances - Non-Construction Programs, if assistance is awarded.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. The reason for collecting this information is for NIST to be able to perform the appropriate technical and business reviews of an ATP proposal. The information obtained will assist in determining eligibility for Federal financial assistance. Responses to the collection of information are required to be considered for an ATP award. In accordance with the ATP legislation, information obtained by ATP or other Department of Commerce offices on a confidential basis on business operations and trade secrets possessed by any company will be protected by the government and shall be exempt from disclosure under the Freedom of Information Act.

1. Enter competition number as stated in the competition notice.
2. Enter the ATP technology area code of the major activity of the proposal using the list of ATP Technology Area Codes (see Appendix A in Kit). If listing does not include a major activity which best fits your proposal, enter the other code (Z0000) and specify the technology area in this item. Use only one code for your proposal. The technology area code is used by ATP for classification purposes only. ATP reserves the right to reclassify proposals to a different technology area if deemed more appropriate.
3. Enter duration of the proposed work in years and months. Note: The maximum duration allowed for a single company is three (3) years.
4. List proposal number(s) of substantially overlapping proposal(s) covering the same general subject previously submitted to the ATP. If none, type None. Also, list competition number(s) if submitting concurrently a substantially overlapping proposal(s) covering the same general subject to another current or pending ATP competition. If none, type 'None'.
5. Enter the legal name, street address, city, state's two-letter abbreviation, zip code and website of organization submitting the proposal. (DO NOT USE A POST OFFICE BOX.)
6. Self-explanatory.
7. Self-explanatory.
8. Self-explanatory.
9. Enter the name, telephone number, fax number, and e-mail address of the principal investigator at the submitting organization responsible for the technical aspects of the proposal. Include mailing address if different than submitting organization's.
10. Enter the name, telephone number, fax number, and e-mail address of the grant/contract manager at the submitting organization responsible for contract/grant administrative matters. Include mailing address if different than submitting organization's.
- 11.A. In each column, enter total amounts requested from the ATP for each year, and enter the total in the last column. Note: The maximum amount of ATP funding to a single company is \$2 million and ATP funds may only be used to fund direct costs.
- .B. In each column, enter total proposer's cost sharing for each year, and enter the total in the last column. Note: Large companies must cost share at least 60 percent of the yearly total project costs (direct plus all of the indirect costs). Small and medium size companies must pay for all of their indirect costs and may elect to pay part of the direct costs.

11.C. In each column, enter the total for each year of the project, and enter the entire project total in the last column.

2. Enter the title of the proposal (90-character limit).

13. Enter a **NON-PROPRIETARY** abstract of the proposed work. As part of the abstract, include a statement of the technical problem addressed in the proposal and provide the rationale for the technology area code (item 2) selected. The technology area code selection should be based on the core technical innovation of the project, not on the application area. This abstract may be used as the basis for a publicly distributed abstract should the proposal be selected for an award.

14.A. thru 14.D. Self-explanatory.

14.E. Answer each question by marking an "x" in the appropriate box.

- i. If the company is delinquent on any Federal debt, including the Internal Revenue Service (IRS), provide in item 15, Remarks, the amount of the debt, the name of the Federal agency to which the debt is owed, how old the debt is, the circumstances surrounding the establishment of the debt, and why the debt has not been paid.
- ii. If a proposal or similar proposal was submitted to another Federal agency, provide in item 15, Remarks, the name of the Federal agency, the date the proposal was sent to that Federal agency, the name of the financial assistance program under which the proposal was submitted, and the amount of Federal funding requested.
- iii. If a company has a parent company outside the United States, identify the parent company and its place of incorporation in item 15, Remarks.
- iv. If a company is majority owned by individuals who are not citizens of the United States, explain in item 15, Remarks.
- v. If the company is subject to control by individuals who are not citizens of the United States, explain in item 15, Remarks.
- vi. If the proposed R&D involves the use of human subjects and/or human tissue, and/or human cell lines, explain in item 15, Remarks, and indicate whether or not the research plan has been reviewed and approved by an Institutional Review Board (IRB). Refer to the ATP Booklet entitled *Guidelines and Documentation Requirements for Research Involving Human and Animal Subjects* available on ATP's website for further guidance.
- vii. If the proposed R&D involves the use of vertebrate animals, explain in item 15, Remarks, and indicate whether or not the research plan has been reviewed and approved by an Institutional Animal, Care and Use Committee (IACUC).

15. Provide any explanations to answers given in item 14 and any other remarks you wish to offer.

16. Explain why your project needs ATP funds. Why is full private funding not available or not possible? What efforts were made to secure internal R&D funding as well as external private capital?

17. Enter the name and title of the authorized company representative submitting the proposal.

18. Self-explanatory.

19. The authorized company representative submitting the proposal must sign this form.

20. Enter the date the form is signed.

## ESTIMATED MULTI-YEAR BUDGET - SINGLE COMPANY

	YEAR ONE	YEAR TWO	YEAR THREE	TOTAL
<b>1. OBJECT CLASS CATEGORY</b>				
A. Personnel Salaries/Wages	\$	\$	\$	\$
B. Personnel Fringe Benefits				
C. Travel				
D. Equipment				
E. Materials/Supplies				
F. Subcontracts				
G. Other				
H. Total Direct Costs (Lines A thru G)				
I. Total Direct Costs Requested From ATP				
J. Total Direct Costs Shared by Proposer (If Any)	\$	\$	\$	\$
K. Total Indirect Costs Absorbed by Proposer	\$	\$	\$	\$
L. Total Costs (Lines H + K)	\$	\$	\$	\$
<b>2. SOURCES OF FUNDS</b>				
A. ATP (Same as Line I)	\$	\$	\$	\$
B.				
C.				
D.				
E. Total Sources of Funds (Same as Line L)	\$	\$	\$	\$
<b>3. TASKS</b>				
A.	\$	\$	\$	\$
B.				
C.				
D.				
E.				
F.				
G.				
H.				
I.				
J.				
K. Total Costs of All Tasks (Same as Line L)	\$	\$	\$	\$

# INSTRUCTIONS FOR FORM NIST-1262 (PAGE 3): ESTIMATED MULTI-YEAR BUDGET - SINGLE COMPANY

KA-552 Every item must be completed and reflect estimated costs for each year of the proposed project and the total for the entire project. KA-552

**OBJECT CLASS CATEGORY.** List in each column the costs associated with each object class category for each year of the proposed project. Enter the totals of the three columns in the last column.

- A. **Personnel Salaries/Wages** - Enter the total salaries of full and part-time personnel, excluding fringe benefits.
- B. **Personnel Fringe Benefits** - Enter the total fringe benefits (vacation, sick, and military leave; health and life insurance; retirement, social security, etc.) associated with the personnel.
- C. **Travel** - Enter the costs for transportation, including airfare, taxis, lodging, subsistence, etc.
- D. **Equipment** - Enter the costs for general items of equipment. **Note:** ATP funds may not be used for construction of new buildings or extensive renovations of existing laboratory buildings. ATP funds may, however, be used for construction of experimental research and development facilities to be located within a new or existing building provided that the equipment or facilities are essential for carrying out the proposed scientific and technical project.
- E. **Materials/Supplies** - Enter the costs for expendable materials and supplies.
- F. **Subcontracts** - Enter the costs for subcontracts. **Note:** Single companies may not subcontract to another part of the same company or to another company with identical ownership.
- G. **Other** - Enter the costs for any other direct costs that do not fit into the direct object class categories above. The cost of the project audit should also be included in this object class category unless it is part of the indirect costs. **Note:** For an award that is less than 24 months, an audit is required only at the end of the project; for 2-3 year awards, an audit is required after the first year and at the end of the project.
- H. **Total Direct Costs** - Enter total direct costs.
- I. **Total Direct Costs Requested From ATP** - Enter the amount of direct costs requested from ATP.
- J. **Total Direct Costs Shared By Proposer** - If any, enter direct costs to be shared by the proposer.
- K. **Total Indirect Costs Absorbed By Proposer** - Enter the total indirect costs to be charged to the proposed project. The term "indirect costs" means those costs incurred for common or joint objectives that cannot be readily identified with a particular final cost objective. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as a direct cost. Because of the diverse characteristics and accounting practices it is not possible to specify the types of costs which may be classified as indirect costs in all situations. However, typical examples of indirect costs for many organizations include general administration expenses, such as the salaries and expenses of executive officers, personnel administration, maintenance, library expenses, and accounting. ATP shall interpret indirect costs in accordance with applicable Federal costs principles.
- L. **Total Costs** - Enter the total costs for the proposed R&D project.

## 2. SOURCES OF FUNDS.

- A.-D. List in the left-most column all sources of support (ATP first) and enter associated costs in appropriate columns. Examples include company funds, state/local government funds, etc. Enter the totals of the columns in the last column.
- E. **Total Sources of Funds** - Enter the total sources of funds in each column for each year (12-month period) of activity.

## 3. TASKS

- A.-J. List in the left-most column all of the tasks and enter the associated costs in the appropriate columns. Enter the totals of the columns in the last column. Tasks should be a high level aggregation of subtasks that have costs which can be easily updated as a group on an annual basis. ATP does not prescribe the appropriate number of tasks. If you have more tasks than the lines provide, make additional copies of this sheet to show the additional tasks.
- K. **Total Costs of All Tasks** - Enter the total costs of all of the tasks in each of the columns for each year of activity.

## SUBCONTRACTS

1. NAME AND ADDRESS OF SUBCONTRACTOR

2. TYPE OF ORGANIZATION (CHECK ALL THAT APPLY)

- ☐ PROFIT - SMALL BUSINESS      ☐ PROFIT - LARGE BUSINESS  
☐ PROFIT - MEDIUM BUSINESS      ☐ FOREIGN-OWNED U.S. SUBSIDIARY  
☐ NON-PROFIT INDEPENDENT RESEARCH ORGANIZATION  
☐ UNIVERSITY      ☐ GOVERNMENTAL LABORATORY

NAME OF CONTACT:  
TELEPHONE NUMBER:  
FAX NUMBER:  
E-MAIL ADDRESS:

3. ESTIMATED AMOUNT OF SUBCONTRACT

4. DESCRIBE SCOPE OF WORK

5. IS THIS A SOLE SOURCE CONTRACT?

☐ YES (IF YES, EXPLAIN)      ☐ NO

NAME AND ADDRESS OF SUBCONTRACTOR

2. TYPE OF ORGANIZATION (CHECK ALL THAT APPLY)

- ☐ PROFIT - SMALL BUSINESS      ☐ PROFIT - LARGE BUSINESS  
☐ PROFIT - MEDIUM BUSINESS      ☐ FOREIGN-OWNED U.S. SUBSIDIARY  
☐ NON-PROFIT INDEPENDENT RESEARCH ORGANIZATION  
☐ UNIVERSITY      ☐ GOVERNMENTAL LABORATORY

NAME OF CONTACT:  
TELEPHONE NUMBER:  
FAX NUMBER:  
E-MAIL ADDRESS:

3. ESTIMATED AMOUNT OF SUBCONTRACT

4. DESCRIBE SCOPE OF WORK

5. IS THIS A SOLE SOURCE CONTRACT?

☐ YES (IF YES, EXPLAIN)      ☐ NO

## SUBCONTRACTS

1. NAME AND ADDRESS OF SUBCONTRACTOR

2. TYPE OF ORGANIZATION (CHECK ALL THAT APPLY)

- ☐ PROFIT - SMALL BUSINESS ☐ PROFIT - LARGE BUSINESS  
☐ PROFIT - MEDIUM BUSINESS ☐ FOREIGN-OWNED U.S. SUBSIDIARY  
☐ NON-PROFIT INDEPENDENT RESEARCH ORGANIZATION  
☐ UNIVERSITY ☐ GOVERNMENTAL LABORATORY

NAME OF CONTACT:  
TELEPHONE NUMBER:  
FAX NUMBER:  
E-MAIL ADDRESS:

3. ESTIMATED AMOUNT OF SUBCONTRACT

4. DESCRIBE SCOPE OF WORK

5. IS THIS A SOLE SOURCE CONTRACT?

☐ YES (IF YES, EXPLAIN) ☐ NO

1. NAME AND ADDRESS OF SUBCONTRACTOR

2. TYPE OF ORGANIZATION (CHECK ALL THAT APPLY)

- ☐ PROFIT - SMALL BUSINESS ☐ PROFIT - LARGE BUSINESS  
☐ PROFIT - MEDIUM BUSINESS ☐ FOREIGN-OWNED U.S. SUBSIDIARY  
☐ NON-PROFIT INDEPENDENT RESEARCH ORGANIZATION  
☐ UNIVERSITY ☐ GOVERNMENTAL LABORATORY

NAME OF CONTACT:  
TELEPHONE NUMBER:  
FAX NUMBER:  
E-MAIL ADDRESS:

3. ESTIMATED AMOUNT OF SUBCONTRACT

4. DESCRIBE SCOPE OF WORK

5. IS THIS A SOLE SOURCE CONTRACT?

☐ YES (IF YES, EXPLAIN) ☐ NO



This form must be submitted with each proposal to identify each subcontract. The front and back of this form are identical and can be used to identify up to 4 subcontractors. This form may be duplicated, as necessary, if there are additional subcontractors. A project in which a substantial share of the ATP funds is going to subcontractors without significant justification will tend to score low because of concerns over the proposer's level of commitment to the project. ATP recipients may not subcontract to another part of the same company or to another company with identical or nearly identical ownership. Work proposed by another part of the same company or by another company with identical ownership should be shown as funded through interorganizational transfers that do not contain profit. Interorganizational transfers should be broken down by budget categories in a similar manner to all other non-subcontract tasks. Additionally, because ATP's goal is to create economic growth in the United States, ATP recipients are expected to use U.S. subcontractors located in the United States with benefits accruing to the United States. Proposals which include foreign subcontractors without adequate justification would normally score low in the ATP selection criterion that ensures that economic benefits must accrue to the United States.

1. Enter the name and street address, city, state's two-letter abbreviation, and zip code. Also enter the name, telephone number, fax number, and e-mail address of the individual in the subcontractor organization to be contacted regarding technical aspects. If a subcontractor(s) identity is still undetermined, enter 'Undetermined'.
2. Mark an "x" in the appropriate box(es) that applies to the subcontractor.
3. Self-explanatory.
4. Briefly describe the scope of work to be performed by the subcontractor.
5. Mark an "x" in the appropriate box. If yes is marked, i.e., subcontractor is selected on a sole-source basis, provide a brief justification for selection on a non-competitive basis. For example, is the subcontractor uniquely qualified? Why? Is the time frame for performance critical and only met by a specific subcontractor? Why?

NIST-1283  
(REV. 0000)  
DAO 203-26U.S. DEPARTMENT OF COMMERCE  
NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY

(FOR ATP USE ONLY)

KA-556

**JOINT VENTURE ADVANCED TECHNOLOGY PROGRAM**  
**(ATP) PROPOSAL COVER SHEET**  
(CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER 11.612)

Public reporting burden for this collection of information is estimated to average thirty (30) hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Director, Advanced Technology Program, National Institute of Standards and Technology, 100 Bureau Drive, Stop 4700, Administration Building, Room A333, Gaithersburg, Maryland 20899-4700.

1. COMPETITION NUMBER	2. TECHNOLOGY AREA CODE	3. PROJECT DURATION YEARS MONTHS
-----------------------	-------------------------	-------------------------------------

4.A. OTHER ATP SUBMISSIONS LIST PROPOSAL NUMBER(S) OF SUBSTANTIALLY OVERLAPPING PROPOSAL(S) PREVIOUSLY SUBMITTED	4.B. IF SUBMITTING A CONCURRENT SUBSTANTIALLY OVERLAPPING PROPOSAL TO ANOTHER CURRENT OR PENDING ATP COMPETITION, LIST COMPETITION NUMBER(S)
---	--

5. LEGAL NAME, ADDRESS, AND WEBSITE OF SUBMITTING ORGANIZATION	6. TYPE OF ORGANIZATION (CHECK ALL THAT APPLY) <input type="checkbox"/> PROFIT - SMALL BUSINESS <input type="checkbox"/> PROFIT - LARGE BUSINESS <input type="checkbox"/> PROFIT - MEDIUM BUSINESS <input type="checkbox"/> FOREIGN-OWNED U.S. SUBSIDIARY <input type="checkbox"/> NON-PROFIT INDEPENDENT RESEARCH ORGANIZATION
	7. EMPLOYER IDENTIFICATION NUMBER (EIN)

8. DUN AND BRADSTREET NUMBER

9. NAME OF PRINCIPAL INVESTIGATOR AT SUBMITTING ORGANIZATION  
(Address required, if different than Item 5)10. NAME OF GRANT/CONTRACT MANAGER AT SUBMITTING ORGANIZATION  
(Address required, if different than Item 5)

TELEPHONE NUMBER:

NUMBER:

TELEPHONE NUMBER:

FAX NUMBER:

E-MAIL ADDRESS:

E-MAIL ADDRESS:

11. SOURCES OF FUNDS	YEAR ONE	YEAR TWO	YEAR THREE	YEAR FOUR	YEAR FIVE	TOTAL
A. ATP	\$	\$	\$	\$	\$	\$
B. PROPOSER	\$	\$	\$	\$	\$	\$
C. TOTAL (A + B)	\$	\$	\$	\$	\$	\$

12. PROPOSAL TITLE

13. NON-PROPRIETARY PROPOSAL ABSTRACT

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14. CERTIFICATION: BY SIGNING THIS PROPOSAL COVER SHEET, I CERTIFY, TO THE BEST OF MY KNOWLEDGE AND BELIEF, THAT ALL INFORMATION IN THIS PROPOSAL IS TRUE AND CORRECT AND THAT:

- A. THIS PROPOSAL IS NOT REQUESTING FUNDING FOR EXISTING OR PLANNED RESEARCH PROGRAMS THAT WOULD BE CONDUCTED IN THE SAME TIME PERIOD IN THE ABSENCE OF FINANCIAL ASSISTANCE UNDER THE ATP.
- B. THE JOINT VENTURE'S COST SHARING PROPOSED IS MORE THAN 50 PERCENT OF EACH YEAR'S TOTAL COSTS.
- C. AT LEAST TWO SEPARATELY OWNED FOR-PROFIT COMPANIES ARE SUBSTANTIALLY INVOLVED IN THE R&D AND ARE CONTRIBUTING TOWARD THE COST SHARING.
- D. THE TOTAL VALUE OF ANY IN-KIND CONTRIBUTIONS DOES NOT EXCEED 30 PERCENT OF THE TOTAL JOINT VENTURE COST SHARE.
- E. THE FOLLOWING QUESTIONS HAVE BEEN TRUTHFULLY ANSWERED:
- |  | YES                      | NO                       |
|--|--------------------------|--------------------------|
| I. ARE ANY OF THE JOINT VENTURE PARTNERS DELINQUENT ON ANY FEDERAL DEBT? (IF YES, EXPLAIN IN ITEM 15, REMARKS.)  | <input type="checkbox"/> | <input type="checkbox"/> |
| II. WAS PROPOSAL OR VERY SIMILAR PROPOSAL SUBMITTED TO ANOTHER FEDERAL AGENCY? (IF YES, EXPLAIN IN ITEM 15, REMARKS.)  | <input type="checkbox"/> | <input type="checkbox"/> |
| III. DO ANY OF THE JOINT VENTURE PARTNERS HAVE A PARENT COMPANY OUTSIDE THE UNITED STATES? (IF YES, IDENTIFY THE PARTNER(S), PARENT COMPANY(IES), AND PLACE(S) OF INCORPORATION IN ITEM 15, REMARKS.)  | <input type="checkbox"/> | <input type="checkbox"/> |
| IV. ARE ANY OF THE JOINT VENTURE PARTNERS MAJORITY OWNED BY INDIVIDUALS WHO ARE NOT CITIZENS OF THE UNITED STATES? (IF YES, EXPLAIN IN ITEM 15, REMARKS.)  | <input type="checkbox"/> | <input type="checkbox"/> |
| V. ARE ANY OF THE JOINT VENTURE PARTNERS SUBJECT TO CONTROL BY INDIVIDUALS WHO ARE NOT CITIZENS OF THE UNITED STATES? (IF YES, EXPLAIN IN ITEM 15, REMARKS.)   | <input type="checkbox"/> | <input type="checkbox"/> |
| VI. DOES THE PROPOSED R&D INVOLVE THE USE OF HUMAN SUBJECTS, AND/OR HUMAN TISSUE, AND/OR HUMAN CELL LINES? (IF YES, EXPLAIN IN ITEM 15, REMARKS, AND INDICATE WHETHER OR NOT THE RESEARCH PLAN HAS BEEN REVIEWED AND APPROVED BY AN INSTITUTIONAL REVIEW BOARD (IRB).) | <input type="checkbox"/> | <input type="checkbox"/> |
| VII. DOES THE PROPOSED R&D INVOLVE THE USE OF VERTEBRATE ANIMALS? (IF YES, EXPLAIN IN ITEM 15, REMARKS, AND INDICATE WHETHER OR NOT THE RESEARCH PLAN HAS BEEN REVIEWED AND APPROVED BY AN ANIMAL CARE AND USE COMMITTEE.)   | <input type="checkbox"/> | <input type="checkbox"/> |

15. REMARKS (CONTINUE ON A SEPARATE SHEET IF NECESSARY)

16. DESCRIBE BRIEFLY WHY FEDERAL ASSISTANCE IS NEEDED FOR THIS INDUSTRY TO FORM A JOINT VENTURE QUICKLY, OR WHY AN EXISTING JOINT VENTURE REQUIRES FEDERAL ASSISTANCE TO EMBARK ON THIS PROPOSED PROJECT. ALSO, DESCRIBE WHAT EFFORTS WERE MADE, PRIOR TO APPLYING FOR ATP FUNDING, TO SECURE PRIVATE CAPITAL TO SUPPORT THIS PROJECT WHOLLY.

17. AUTHORIZED COMPANY REPRESENTATIVE (TYPE NAME AND TITLE)

18. TELEPHONE NUMBER

19. SIGNATURE

20. DATE

This form must be submitted with each joint venture proposal. Every item must be completed to ensure proper review. The authorized company representative who signs the form must have delegated fiduciary authority. By signing this form, the company representative certifies the commitment of cost sharing, verifies the certification statements on the form, and verifies the accuracy of the proposal. The signature also signifies the company representative has coordinated with top management within his/her own company and all companies/organizations described as joint venture partners about their commitment and cost sharing to the proposed project. Additionally, by signing the form, the company representative acknowledges the proposal is being submitted with the agreement that NIST may use non-Government reviewers, if necessary. (Such reviewers are screened to eliminate conflicts of interest and must sign non-disclosure statements.) Proposals are not subject to review by the State under Executive Order 12372. Note: In addition to the certification on item 14, ATP proposers must comply with the SF-424B, Assurances - Non-Construction Programs, if assistance is awarded.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number. The reason for collecting this information is for NIST to be able to perform the appropriate technical and business reviews of an ATP proposal. The information obtained will assist in determining eligibility for Federal financial assistance. Responses to the collection of information are required to be considered for an ATP award. In accordance with the ATP legislation, information obtained by ATP or other Department of Commerce offices on a confidential basis on business operations and trade secrets possessed by any company will be protected by the government and shall be exempt from disclosure under the Freedom of Information Act.

1. Enter competition number as stated in the competition notice.
2. Enter the ATP technology area code of the major activity of the proposal using the list of ATP Technology Area Codes (see Appendix A in Kit). If listing does not include a major activity which best fits your proposal, enter the other code (Z0000) and specify the technology area in this item. Use only one code for your proposal. The technology area code is used by ATP for classification purposes only. ATP reserves the right to reclassify proposals to a different technology area if deemed more appropriate.
3. Enter the duration of the proposed work in years and months. Note: The maximum duration allowed for a joint venture is five (5) years.
4. List proposal number(s) of substantially overlapping proposal(s) covering the same general subject previously submitted to the ATP. If none, type None. Also, list competition number(s) if submitting concurrently a substantially overlapping proposal(s) covering the same general subject to another current or pending ATP competition. If none, type None.
5. Enter the legal name, street address, city, state's two-letter abbreviation, zip code, and website of organization submitting the proposal. (DO NOT USE A POST OFFICE BOX.) Note: The names and information on the other joint venture participants should be identified on Form NIST-1263 (Page 4), Other Joint Venture Participants.
6. Self-explanatory.
7. Self-explanatory.
8. Self-explanatory.
9. Enter the name, telephone number, fax number, and e-mail address of the principal investigator at the submitting organization responsible for the technical aspects of the proposal. Include mailing address if different than submitting organization's.
10. Enter the name, telephone number, fax number, and e-mail address of the grant/contract manager at the submitting organization responsible for contract/grant administrative matters. Include mailing address if different than submitting organization's.
- 11.A. In each column, enter total amounts requested from the ATP for each year, and enter the total in the last column. Note: The ATP funding requested must be less than 50 percent of the total project costs.
- 11.B. In each column, enter total proposer's (joint venture) cost sharing for each year, and enter the total in the last column. Note: Joint ventures must provide more than 50 percent of each year's total costs.

## INSTRUCTIONS FOR FORM NIST-1263 (PAGES 1 &amp; 2) CONTINUED:

- 11.C. In each column, enter the total for each year of the project, and enter the entire project total in the last column.
12. Enter the title of the proposal (90-character limit).
13. Enter a NON-PROPRIETARY abstract of the proposed work. As part of the abstract, include a statement of the technical problem addressed in the proposal and provide the rationale for the technology area code (item 2) selected. The technology area code selection should be based on the core technical innovation of the project, not on the application area. This abstract may be used as the basis for a publicly distributed abstract should the proposal be selected for an award.
- 14.A. thru 14.D. Self-explanatory.
- 14.E. Answer each question by marking an "x" in the appropriate box.
- If any of the joint venture participants is delinquent on any Federal debt, including the Internal Revenue Service, provide in item 15, Remarks, the amount of the debt, the name of the Federal agency to which the debt is owed, how old the debt is, the circumstances surrounding the establishment of the debt, and why the debt has not been paid.
  - If a proposal or similar proposal was submitted to another Federal agency, provide in item 15, Remarks, the name of the Federal agency, the date the proposal was sent to that Federal agency, the name of the financial assistance program under which the proposal was submitted, and the amount of Federal funding requested.
  - If any joint venture partner has a parent company outside the United States, identify the parent company(ies) and its/their place of incorporation in item 15, Remarks.
  - If any joint venture partner is majority owned by individuals who are not citizens of the United States, explain in item 15, Remarks.
  - If any joint venture partner is subject to control by individuals who are not citizens of the United States, explain in item 15, Remarks.
  - If the proposed R&D involves the use of human subjects and/or human tissue, and/or human cell lines, explain in item 15 Remarks, and indicate whether or not the research plan has been reviewed and approved by an Institutional Review Board (IRB). Refer to the ATP Booklet entitled *Guidelines and Documentation Requirements for Research Involving Human and Animal Subjects* available on ATP's website for further guidance.
  - If the proposed R&D involves the use of vertebrate animals, explain in item 15. Remarks, and indicate whether or not the research plan has been reviewed and approved by an Institutional Animal, Care and Use Committee (IACUC).
15. Provide any explanations to answers given in item 14 and any other remarks you wish to offer.
16. Explain why your project needs ATP funds. Why is full private funding not available or not possible? What efforts were made to secure internal R&D funding as well as external private capital?
17. Enter the name and title of the authorized company representative submitting the proposal on behalf of the joint venture.
18. Self-explanatory.
19. The authorized company representative submitting the proposal must sign this form.
20. Enter the date the form is signed.

## ESTIMATED MULTI-YEAR BUDGET - JOINT VENTURE

YEAR: \_\_\_\_\_

SPECIFY NAME OF PARTICIPANT:

PARTICIPANT

PARTICIPANT

PARTICIPANT

PARTICIPANT

PARTICIPANT

TOTAL

## 1. OBJECT CLASS CATEGORY

A. Personnel Salaries/Wages

B. Personnel Fringe Benefits

C. Travel

D. Equipment

E. Materials/Supplies

F. Subcontracts

G. Other

H. Total Direct Costs (Lines A thru G)

I. Total Indirect Costs

J. Total Costs (Lines H + I)

K. Non ATP Funds

L. ATP Funds Requested

## 2. SOURCES OF FUNDS

A. ATP (Same as Line L)

B.

C.

D.

E. Total Sources of Funds (Same as Line J)

## 3. TASKS

A.

B.

C.

D.

E.

F.

G.

H.

I.

K. Total Costs of All Tasks (Same as Line J)

## ESTIMATED MULTI-YEAR BUDGET - JOINT VENTURE

YEAR:

SPECIFY NAME OF PARTICIPANT:

PARTICIPANT

PARTICIPANT

PARTICIPANT

PARTICIPANT

PARTICIPANT

TOTAL

## 1. OBJECT CLASS CATEGORY

A. Personnel Salaries/Wages

B. Personnel Fringe Benefits

C. Travel

D. Equipment

E. Materials/Supplies

F. Subcontracts

G. Other

H. Total Direct Costs (Lines A thru G)

I. Total Indirect Costs

J. Total Costs (Lines H + I)

K. Non ATP Funds

L. ATP Funds Requested

## 2. SOURCES OF FUNDS

A. ATP (Same as Line L)

B.

C.

D.

E. Total Sources of Funds (Same as Line J)

## 3. TASKS

A.

B.

C.

D.

E.

F.

G.

H.

I.

J.

K. Total Costs of All Tasks (Same as Line J)

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Every item must be completed and reflect estimated costs for each year of the proposed project and the total for the entire project. The front and back of this form are identical. If your joint venture is for more than two years in duration and the number of participants is greater than five, you will need to make additional copies of this form, as necessary, depending on the duration of the project and number of participants. Specify the year on each page at the top right hand block as noted and the name of each participant at the top of each column. Include a TOTAL budget which consolidates all of the project years' costs.

1. **OBJECT CLASS CATEGORY.** List in each column the costs associated with each object class category for each year of the proposed project. Enter the totals of the five columns in the last column.
  - A. **Personnel Salaries/Wages** - Enter the total salaries of full and part-time personnel, excluding fringe benefits.
  - B. **Personnel Fringe Benefits** - Enter the total fringe benefits (vacation, sick, and military leave; health and life insurance; retirement, social security, etc.) associated with the personnel.
  - C. **Travel** - Enter the costs for transportation, including airfare, taxis, lodging, subsistence, etc.
  - D. **Equipment** - Enter the costs for general items of equipment. **Note:** ATP funds may not be used for construction of new buildings or extensive renovations of existing laboratory buildings. ATP funds may, however, be used for construction of experimental research and development facilities to be located within a new or existing building provided that the equipment or facilities are essential for carrying out the proposed scientific and technical project.
  - E. **Materials/Supplies** - Enter the costs for expendable materials and supplies.
  - F. **Subcontracts** - Enter the costs for subcontracts. **Note:** Joint venture participants may not subcontract to another part of the same company or to another company with identical ownership.
  - G. **Other** - Enter the costs for any other direct costs that do not fit into the direct object class categories above. The cost of the project audit should also be included in this object class category unless it is part of the indirect costs. **Note:** For an award that is less than 24 months, an audit is required only at the end of the project; for 2, 3, or 4 year awards, an audit is required after the first year and at the end of the project; for 5 year awards, an audit is required after the first year, third year, and at the end of the project.
  - H. **Total Direct Costs** - Enter total direct costs.
  - I. **Total Indirect Costs** - Enter the total indirect costs to be charged to the proposed project. The term "indirect costs" means those costs incurred for common or joint objectives that cannot be readily identified with a particular final cost objective. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as a direct cost. Because of the diverse characteristics and accounting practices it is not possible to specify the types of costs which may be classified as indirect costs in all situations. However, typical examples of indirect costs for many organizations include general administration expenses, such as the salaries and expenses of executive officers, personnel administration, maintenance, library expenses, and accounting. ATP shall interpret indirect costs in accordance with applicable Federal cost principles.
  - J. **Total Costs** - Enter the total costs for the proposed R&D project.
  - K. **Non-ATP Funds** - Enter the total non-ATP funds (i.e., funds provided by each participants, state/local, and other private sources). **NOTE:** The total non-ATP funds must be more than 50 percent of the total project costs for each year's total costs.
  - L. **ATP Funds Requested** - Enter total amount requested from ATP. **NOTE:** The ATP funding requested must be less than 50 percent of the total project costs for each year's total costs.

## 2. SOURCES OF FUNDS.

- A.-D. List in the left-most column all sources of support individually (ATP first) and enter associated costs in appropriate columns. Examples include each participant, state/local government, etc. Enter totals of the columns in the last column.
- E. **Total Sources of Funds** - Enter the total sources of funds in each column for each year (12-month period) of activity.



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## 3. TASKS.

- A.-J. List in the left-most column all of the tasks and enter the associated costs in the appropriate columns. Enter the totals in the columns in the last column. Tasks should be a high level aggregation of subtasks that have costs which can be easily updated as a group on an annual basis. ATP does not prescribe the appropriate number of tasks. If you have more tasks than the lines provide, make additional copies of this sheet to show the additional tasks.
- K. Total Costs of All Tasks - Enter the total costs of all of the tasks in each of the columns for each year of activity.

[illegible]

## OTHER JOINT VENTURE PARTICIPANTS (DO NOT INCLUDE SUBMITTING ORGANIZATION)

1. LEGAL NAME, ADDRESS AND WEBSITE OF PARTICIPANT

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2. TYPE OF ORGANIZATION (CHECK ALL THAT APPLY)

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- ☐ PROFIT - SMALL BUSINESS ☐ PROFIT - LARGE BUSINESS
- ☐ PROFIT - MEDIUM BUSINESS ☐ FOREIGN-OWNED U.S. SUBSIDIARY
- ☐ NON-PROFIT INDEPENDENT RESEARCH ORGANIZATION
- ☐ UNIVERSITY ☐ GOVERNMENTAL LABORATORY

NAME OF CONTACT:  
TELEPHONE NUMBER:  
FAX NUMBER:  
E-MAIL ADDRESS:

3. EMPLOYEE IDENTIFICATION NUMBER (EIN)

4. DUN AND BRADSTREET NUMBER

1. LEGAL NAME, ADDRESS AND WEBSITE OF PARTICIPANT

2. TYPE OF ORGANIZATION (CHECK ALL THAT APPLY)

- ☐ PROFIT - SMALL BUSINESS ☐ PROFIT - LARGE BUSINESS
- ☐ PROFIT - MEDIUM BUSINESS ☐ FOREIGN-OWNED U.S. SUBSIDIARY
- ☐ NON-PROFIT INDEPENDENT RESEARCH ORGANIZATION
- ☐ UNIVERSITY ☐ GOVERNMENTAL LABORATORY

NAME OF CONTACT:  
TELEPHONE NUMBER:  
FAX NUMBER:  
E-MAIL ADDRESS:

3. EMPLOYEE IDENTIFICATION NUMBER (EIN)

4. DUN AND BRADSTREET NUMBER

1. LEGAL NAME, ADDRESS AND WEBSITE OF PARTICIPANT

2. TYPE OF ORGANIZATION (CHECK ALL THAT APPLY)

- ☐ PROFIT - SMALL BUSINESS ☐ PROFIT - LARGE BUSINESS
- ☐ PROFIT - MEDIUM BUSINESS ☐ FOREIGN-OWNED U.S. SUBSIDIARY
- ☐ NON-PROFIT INDEPENDENT RESEARCH ORGANIZATION
- ☐ UNIVERSITY ☐ GOVERNMENTAL LABORATORY

NAME OF CONTACT:  
TELEPHONE NUMBER:  
FAX NUMBER:  
E-MAIL ADDRESS:

3. EMPLOYEE IDENTIFICATION NUMBER (EIN)

4. DUN AND BRADSTREET NUMBER

1. LEGAL NAME, ADDRESS AND WEBSITE OF PARTICIPANT

2. TYPE OF ORGANIZATION (CHECK ALL THAT APPLY)

- ☐ PROFIT - SMALL BUSINESS ☐ PROFIT - LARGE BUSINESS
- ☐ PROFIT - MEDIUM BUSINESS ☐ FOREIGN-OWNED U.S. SUBSIDIARY
- ☐ NON-PROFIT INDEPENDENT RESEARCH ORGANIZATION
- ☐ UNIVERSITY ☐ GOVERNMENTAL LABORATORY

NAME OF CONTACT:  
TELEPHONE NUMBER:  
FAX NUMBER:  
E-MAIL ADDRESS:

3. EMPLOYEE IDENTIFICATION NUMBER (EIN)

4. DUN AND BRADSTREET NUMBER

1. LEGAL NAME, ADDRESS AND WEBSITE OF PARTICIPANT

2. TYPE OF ORGANIZATION (CHECK ALL THAT APPLY)

- ☐ PROFIT - SMALL BUSINESS ☐ PROFIT - LARGE BUSINESS
- ☐ PROFIT - MEDIUM BUSINESS ☐ FOREIGN-OWNED U.S. SUBSIDIARY
- ☐ NON-PROFIT INDEPENDENT RESEARCH ORGANIZATION
- ☐ UNIVERSITY ☐ GOVERNMENTAL LABORATORY

NAME OF CONTACT:  
TELEPHONE NUMBER:  
FAX NUMBER:  
E-MAIL ADDRESS:

3. EMPLOYEE IDENTIFICATION NUMBER (EIN)

4. DUN AND BRADSTREET NUMBER

This form must be submitted with each joint venture proposal to identify the joint venture participants (excluding the organization submitting the proposal since that information is provided on page 1 of the Form NIST-1263). The front and back of this form are identical and can be used to identify up to 10 participating organizations. This form may be duplicated, as necessary, if there are additional participating organizations. Categories of joint venture participants are not adequate identification. For example, do not list "A Manufacturing Company," "A University," "A Hospital," etc. You must provide the legal name and contact information of each joint venture participant. Include only those organizations to be bound by the joint venture agreement. Do not list subcontractors on this form as information on proposed subcontractors should be provided on page 5 of the NIST-1263. Additionally, do not list informal collaborators.

1. Enter the legal name and street address, city, state's two-letter abbreviation, zip code, and website of the participant. (DO NOT USE A POST OFFICE BOX.) Also enter the name of the individual in the participant's organization to be contacted regarding the technical aspects of the proposal.
2. Self-explanatory.
3. Self-explanatory.
4. Self-explanatory.

## SUBCONTRACTS

1. NAME AND ADDRESS OF SUBCONTRACTOR

2. TYPE OF ORGANIZATION (CHECK ALL THAT APPLY)

- ☐ PROFIT - SMALL BUSINESS ☐ PROFIT - LARGE BUSINESS
- ☐ PROFIT - MEDIUM BUSINESS ☐ FOREIGN-OWNED U.S. SUBSIDIARY
- ☐ NON-PROFIT INDEPENDENT RESEARCH ORGANIZATION
- ☐ UNIVERSITY ☐ GOVERNMENTAL LABORATORY

NAME OF CONTACT:  
TELEPHONE NUMBER:  
FAX NUMBER:  
E-MAIL ADDRESS:

3. ESTIMATED AMOUNT OF SUBCONTRACT

4. DESCRIBE SCOPE OF WORK

5. IS THIS A SOLE SOURCE CONTRACT?

☐ YES (IF YES, EXPLAIN) ☐ NO

1. NAME AND ADDRESS OF SUBCONTRACTOR

2. TYPE OF ORGANIZATION (CHECK ALL THAT APPLY)

- ☐ PROFIT - SMALL BUSINESS ☐ PROFIT - LARGE BUSINESS
- ☐ PROFIT - MEDIUM BUSINESS ☐ FOREIGN-OWNED U.S. SUBSIDIARY
- ☐ NON-PROFIT INDEPENDENT RESEARCH ORGANIZATION
- ☐ UNIVERSITY ☐ GOVERNMENTAL LABORATORY

NAME OF CONTACT:  
TELEPHONE NUMBER:  
FAX NUMBER:  
E-MAIL ADDRESS:

3. ESTIMATED AMOUNT OF SUBCONTRACT

4. DESCRIBE SCOPE OF WORK

5. IS THIS A SOLE SOURCE CONTRACT?

☐ YES (IF YES, EXPLAIN) ☐ NO

## SUBCONTRACTS

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NAME AND ADDRESS OF SUBCONTRACTOR

KA-568

TYPE OF ORGANIZATION (CHECK ALL THAT APPLY)

KA-568

- ☐ PROFIT - SMALL BUSINESS ☐ PROFIT - LARGE BUSINESS  
☐ PROFIT - MEDIUM BUSINESS ☐ FOREIGN-OWNED U.S. SUBSIDIARY  
☐ NON-PROFIT INDEPENDENT RESEARCH ORGANIZATION  
☐ UNIVERSITY ☐ GOVERNMENTAL LABORATORY

NAME OF CONTACT:  
TELEPHONE NUMBER:  
FAX NUMBER:  
E-MAIL ADDRESS:

3. ESTIMATED AMOUNT OF SUBCONTRACT

4. DESCRIBE SCOPE OF WORK

5. IS THIS A SOLE SOURCE CONTRACT?

☐ YES (IF YES, EXPLAIN) ☐ NO

1. NAME AND ADDRESS OF SUBCONTRACTOR

2. TYPE OF ORGANIZATION (CHECK ALL THAT APPLY)

- ☐ PROFIT - SMALL BUSINESS ☐ PROFIT - LARGE BUSINESS  
☐ PROFIT - MEDIUM BUSINESS ☐ FOREIGN-OWNED U.S. SUBSIDIARY  
☐ NON-PROFIT INDEPENDENT RESEARCH ORGANIZATION  
☐ UNIVERSITY ☐ GOVERNMENTAL LABORATORY

NAME OF CONTACT:  
TELEPHONE NUMBER:  
FAX NUMBER:  
E-MAIL ADDRESS:

3. ESTIMATED AMOUNT OF SUBCONTRACT

4. DESCRIBE SCOPE OF WORK

5. IS THIS A SOLE SOURCE CONTRACT?

☐ YES (IF YES, EXPLAIN) ☐ NO

This form must be submitted with each proposal to identify each subcontract. The front and back of this form are identical and can be used to identify up to 4 subcontractors. This form may be duplicated, as necessary, if there are additional subcontractors. A project in which a substantial share of the ATP funds is going to subcontractors without significant justification will tend to score low because of concerns over the proposer's level of commitment to the project. ATP recipients may not subcontract to another part of the same company or to another company with identical or nearly identical ownership. Work proposed by another part of the same company or by another company with identical ownership should be shown as funded through interorganizational transfers that do not contain profit. Interorganizational transfers should be broken down by budget categories in a similar manner to all other non-subcontract tasks. Additionally, because ATP's goal is to create economic growth in the United States, ATP recipients are expected to use U.S. subcontractors located in the United States with benefits accruing to the United States. Proposals which include foreign subcontractors without adequate justification use would normally score low in the ATP selection criterion that ensures that economic benefits must accrue to the United States.

1. Enter the name and street address, city, state's two-letter abbreviation, and zip code. Also enter the name, telephone number, fax number, and e-mail address of the individual in the subcontractor organization to be contacted regarding technical aspects. If a subcontractor(s) identity is still undetermined, enter Undetermined.
2. Mark an "x" in the appropriate box(es) that applies to the subcontractor.
3. Self-explanatory.
4. Briefly describe the scope of work to be performed by the subcontractor.
5. Mark an "x" in the appropriate box. If yes is marked, i.e., subcontractor is selected on a sole-source basis, provide a brief justification for selection on a non-competitive basis. For example, is the subcontractor uniquely qualified? Why? Is the time frame for performance critical and only met by a specific subcontractor? Why?

## ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

**PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.**

**NOTE:** Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.



- 9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.
- 10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
- 11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).
- 12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- 13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).
- 14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- 15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
- 16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.
- 17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."
- 18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED	

**CERTIFICATIONS REGARDING DEBARMENT, SUSPENSION AND  
OTHER RESPONSIBILITY MATTERS, DRUG-FREE WORKPLACE REQUIREMENTS  
AND LOBBYING**

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature on this form provides for compliance with certification requirements under 15 CFR Part 26, "Governmentwide Debarment and Suspension (Nonprocurement)" and "Governmentwide Requirements for Drug-Free Workplace" and 15 CFR Part 28, "New Restrictions on Lobbying." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Commerce determines to award the covered transaction, grant or cooperative agreement.

**1. DEBARMENT, SUSPENSION AND OTHER  
RESPONSIBILITY MATTERS**

As requested by Executive Order 12549, Debarment and Suspension, and implemented at 15 CFR Part 26, for prospective participants in primary covered transactions, as defined at 15 CFR Part 26, Sections 26.105 and 26.110 -

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

**2. DRUG-FREE WORKPLACE REQUIREMENTS**

**Alternate I. Grantees Other Than Individuals**

As required by the Drug-Free Workplace Act of 1988, and implemented at 15 CFR Part 26, Subpart F, for grantees, as defined at 15 CFR Part 26, Sections 26.605 and 26.610 -

A. The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's

workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about--

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that as a condition of employment under the grant, the employee will --

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to the Director, Office of Federal Assistance, Office of Federal Assistance and Management Support, HCHB Room 6054, U.S. Department of Commerce, Washington, DC 20230. Notice shall include the identification numbers(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d) (2), with respect to any employee who is so convicted--

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraph (a), (b), (c), (d), (e), and (f).

B. The grantee shall insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance: (Street address, city, county, state, ZIP code):

Check ☐ if there are workplaces on file that are not identified here.

Alternate II. Grantees Who Are Individuals

As required by the Drug-Free Workplace Act of 1988, and implemented at 15 CFR 26, Subpart F, for grantees, as defined at 15 CFR Part 26, Sections 26.605 and 26.610 -

(A) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity within the grant;

(B) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to the Director, Office of Federal Assistance, Office of Federal Assistance and Management Support, HCHB Room 6054, U.S. Department of Commerce, Washington, DC 20230. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

3. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 15 CFR Part 28, for persons entering into a grant, cooperative agreement or contract over \$100,000, or loan or loan guarantee over \$150,000, as defined at 15 CFR Part 28, Sections 28.105 and 28.110, the applicant certifies that to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or

employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form -LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above applicable certification(s).

NAME OF APPLICANT

AWARD NUMBER AND/OR PROJECT NAME

PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

SIGNATURE

DATE

DISCLOSURE OF LOBBYING ACTIVITIES

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352  
(See reverse for public burden disclosure.)

<b>1. Type of Federal Action:</b> <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance		<b>2. Status of Federal Action:</b> <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award		<b>3. Report Type:</b> <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change <b>For Material Change Only:</b> year _____ quarter _____ date of last report _____	
<b>4. Name and Address of Reporting Entity:</b> <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier _____, if known:  Congressional District, if known:			<b>5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:</b>  Congressional District, if known:		
<b>6. Federal Department/Agency:</b>			<b>7. Federal Program Name/Description:</b>  CFDA Number, if applicable: _____		
<b>8. Federal Action Number, if known:</b>			<b>9. Award Amount, if known:</b> \$ _____		
<b>10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):</b>			<b>b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):</b>		
<b>11.</b> Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.			Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____		
<b>Federal Use Only:</b>			Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)		

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.  
  
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

FORM 576  
JAN 7, 1988  
DAO 207-10

U.S. DEPARTMENT OF COMMERCE

KA-576

DO NOT COMPLETE THIS SECTION

KA-576

DATE OF REQUEST

## APPLICANT FOR FUNDING ASSISTANCE

- ☐
- NAME CHECK
- 
- ☐
- IDENTIFICATION CHECK

INSTRUCTIONS: Please type or print clearly. Information below will be used for investigation of named person's or firm's character and/or integrity. In answer to question 11 below, the fact that you may have a conviction record or have criminal charges pending against you will not necessarily disqualify you. An incorrect answer may cause your application to be turned down. Please read Privacy Act Advisory Statement on reverse of form.

1. NAME OF APPLICANT (If no middle name use (NMN). Also list former names used).

LAST FIRST MIDDLE MAIDEN

SPOUSE

5. NAME AND ADDRESS OF FIRM (Post Office Box is not sufficient)

6. PHONE NUMBER OF FIRM

7. REGIONAL OFFICE

2. DATE OF BIRTH

3. SOCIAL SECURITY NUMBER

8. U.S. CITIZEN?

- ☐
- YES
- ☐
- NO (If no, give alien registration number)

4. PLACE OF BIRTH

9. EMPLOYMENT (Last 3 years)

FROM TO EMPLOYER NAME AND COMPLETE ADDRESS

10. RESIDENCE (Last 3 years)

FROM TO COMPLETE ADDRESS

11. HAVE YOU EVER BEEN CONVICTED OF A CRIMINAL OFFENSE OR ARE CRIMINAL CHARGES PENDING AGAINST YOU? (You may omit minor traffic violations for which you forfeited \$50.00 or less).

- ☐
- YES
- ☐
- NO (If yes, please furnish details on the reverse side of this form).

12. RESULTS OF CHECK (Government Use Only)

With knowledge of 18 U.S.C. 1001 and 42 U.S.C. 3220 which provide for criminal penalties for the making of false statements, the undersigned hereby certifies that the above information is correct.

SIGNATURE

DATE





OMB Approval No: 0693-0009  
Approval Expires: November 30, 2003

## EXHIBIT 14

## Budget Data

[Paperwork Reduction Act: Under the Paperwork Reduction Act no person is required to respond to a collection of information unless it displays a valid OMB control number. Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to Director, Advanced Technology Program, Administration Building, Room A333, MS 4700, Gaithersburg, MD 20899-4700.]

**Purpose:** The Budget Data worksheets should be used for the preparation of your budget information and should be submitted in Gate 2. The electronic version can be found at the ATP website <http://www.atp.nist.gov>.

The budget is excluded from the page limitation and is used by both technical and business reviewers and by a Grants Official to determine reasonableness and allowability of costs. The overall estimated multi-year budget numbers are to be provided on page 3 of Form NIST-1262 or NIST-1263. Your budget information is a breakdown of the figures reported on the NIST-1262 or NIST-1263. Breakdowns should be as accurate and specific as possible. Include a breakdown for each year of the project and if a joint venture (JV) proposal, include the budget data for each JV participant for each year including each JV participant's annual cost sharing. Make sure any figures presented exactly match the figures on Form NIST-1262 or NIST-1263, and make sure the arithmetic is correct. Please round to the nearest dollar.

Proposed costs must be reasonable, allocable, and allowable in accordance with the applicable Federal cost principles (see 15 CFR 14.27). All salaries/wages, fringe benefits, travel, materials and supplies, equipment, subcontracts, other costs, and indirect costs proposed are to be consistent with costs incurred for like or similar items on all other Federal and non-Federal projects or cost centers.

We recognize that unexpected events occur frequently in R&D projects, and that budgets may need to be changed as a project proceeds. **Don't fear that by providing a multi-year budget beyond the first year, you will be locked into those details. ATP allows a certain amount of flexibility in moving funds from one line item to another as circumstances change.** By stating an amount for a given task, you will not be required to spend precisely that amount on that task. For example, if, in the second or third year of your project, you find that you need to spend more on one task and less on another than anticipated, that can be accommodated. A task that proves unnecessary can be deleted and a new task can be defined if there is adequate justification that such changes will enhance the chances of accomplishing the objectives of the project.

Recognizing that change is inevitable, we may ask our recipients for a revised budget at the beginning of each year of a multi-year project. However, the total amount provided by ATP for the project cannot be increased. You will NOT be reimbursed for project overruns. Try to avoid overestimating or underestimating your project costs. The dollar amount of your request must be commensurate with the tasks you define.

At a minimum, details on the following object class categories must be provided:



**Budget Data**

Proposal Number \_\_\_\_\_

Name of Company \_\_\_\_\_

Year \_\_\_\_\_

**A. Personnel** – List each position by name of employee and title, if available. Show the annual salary rate and the percentage of time devoted to the project. Compensation paid for employees must be consistent with that paid for similar work within the proposer's organization and similar positions in the industry. Employees who are considered indirect labor should not be included in the breakdown of direct salaries or in section 1A of the Form NIST-1262 or NIST-1263. Escalation rates for the out-years should be reasonable. We recognize that a company may not be able to identify all of the personnel to be assigned to the project several years down the road. Where this cannot be done, use generic position titles such as "senior chemical engineer" and for name, "to be determined." Consultants should NOT be included in this category, but more appropriately under the "subcontracts" category and described on Form NIST-1262 or NIST-1263, pages 4 and 5, respectively.

Name/Position Title	Annual Salary	Percentage of Time on Project	Cost
			<b>TOTAL</b> _____

**B. Fringe Benefits** – Identify percentage rate; if greater than 35 %, provide a breakdown of what makes up the fringe benefits (i.e., vacation, sick, military leave, health and life insurance, retirement, social security, etc.). If fringe benefits are normally included in your organization's indirect cost rate, they should be budgeted as such, and check the appropriate line below.

Percentage Rate: \_\_\_\_\_ Check here if included in indirect: \_\_\_\_\_

If percentage rate exceeds 35%, provide breakdown:

**TOTAL** \_\_\_\_\_

C. Travel – Provide best estimate of travel required for the project, and provide the basis of computation (i.e., item x number of people x number of trips). Note that ATP recipients are expected to adhere to government policies regarding travel, such as, coach rather than first class accommodations, etc. Travel costs should represent a coherent part of the project’s “communications strategy” for smooth coordination among participants. While foreign travel is not precluded, it is discouraged and will require a strong justification on how it is directly related to the R&D activities of the ATP project. Likewise, the travel cost for attending conferences must be strongly justified as essential and relevant to the research and development aspects of the project.

Purpose of Travel	Destination	Item (mode transportation, lodging, and subsistence)	Computation	Cost
Travel justification for foreign travel and conferences:				
TOTAL				

**D. Equipment** – Identify each item of equipment, methodology used to arrive at the proposed costs, (i.e., historical costs, competitive bid, published price lists, or cost/price analysis), basis of computation (i.e., cost per item x number of items), and cost. Budget estimates for equipment items exceeding \$100,000 each must be described and justified separately. Also identify by placing an asterisk on any in-kind owned equipment and its current depreciated value using the participant's preestablished depreciation accounting methods. The value of equipment will be further prorated according to the share of total use dedicated to carrying out the proposed ATP work. ATP funds may not be used for construction of new buildings or extensive renovations of existing laboratory buildings. ATP funds may, however, be used for construction of experimental research and development facilities to be located within a new or existing building provided that the equipment or facilities are essential for carrying out the project. If such costs are proposed, include below and provide justification.

Item	Methodology	Computation	Cost
------	-------------	-------------	------

Justification for any item over \$100,000, or construction costs:

TOTAL \_\_\_\_\_

**E. Materials/Supplies** – Provide a complete breakdown of each item/type of expendable materials and supplies, methodology used to arrive at the proposed costs (i.e., historical costs, competitive bid, published price lists, or cost/price analysis), basis of computation (i.e., item x number of items), and cost.

Item	Methodology	Computation	Cost
------	-------------	-------------	------

TOTAL \_\_\_\_\_

**F. Subcontractors** – For each subcontractor identified on the NIST-1262 Page 4 or NIST-1263 Page 5, enter the name, if known, service to be provided, hourly or daily fee (8-hour day), and estimated time on the project. Subcontractor fees in excess of \$450 per day require additional justification. Proposers are encouraged to promote free and open competition in awarding subcontracts.

<u>Name of Subcontractor</u>	<u>Service Provided</u>	<u>Computation</u>	<u>Cost</u>
------------------------------	-------------------------	--------------------	-------------

*Subtotal* \_\_\_\_\_

***Subcontractor Expenses:*** List all expenses to be paid from the award to the individual subcontractors in addition to their fees (i.e., travel, meals, lodging, etc.).

<u>Item</u>	<u>Location</u>	<u>Computation</u>	<u>Cost</u>
-------------	-----------------	--------------------	-------------

*Subtotal* \_\_\_\_\_

**TOTAL** \_\_\_\_\_

- G. Other – Identify and provide a detailed description of any other direct costs which do not fall into the object cost categories above, basis of computation (i.e., cost per item x number of items), and cost. The cost of the project audit should also be included in this category unless it is part of the indirect costs. If it is part of the indirect costs indicate it as such. Each JV partner should budget for an audit. For awards less than 24 months, an audit is required at the end of the project; for 2, 3, or 4 year awards, an audit is required after the first year and at the end of the project; for 5 year awards, an audit is required after the first year, third year, and at the end of the project.

Description	Computation	Cost
-------------	-------------	------

Audits

TOTAL \_\_\_\_\_

- H. Indirect Costs –Specify the current indirect cost rate(s), computation used, and cost. If an indirect cost rate was negotiated with a cognizant Federal agency, include a copy of the approved negotiated agreement. If an indirect cost rate has not been established by a cognizant Federal agency please state this below.

Percentage Rate	Computation	Cost
-----------------	-------------	------

TOTAL \_\_\_\_\_

**U.S. DEPARTMENT OF COMMERCE**

Norman Y. Mineta, Secretary

**TECHNOLOGY ADMINISTRATION**

Dr. Cheryl L. Shavers, Under Secretary of Commerce for Technology

**NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY**

Raymond G. Kammer, Director

**ADVANCED TECHNOLOGY PROGRAM**

Alan P. Balutis, Director

National Institute of Standards and Technology

Advanced Technology Program

100 Bureau Drive, Stop 4701

Administration Building 101, Room A413

Gaithersburg, MD 20899-4701

November 2000



U.S. Department of Commerce  
National Institute of Standards and Technology  
100 Bureau Drive, Stop 4701  
Administration Building 101, Room A413  
Gaithersburg, Md 20899-4701

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**GENERAL TERMS AND CONDITIONS  
ADVANCED TECHNOLOGY PROGRAM**

**August 2001**

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Attachment A – Optional Guidelines for Quarterly R&D  
Performance Reports (5 Pages)

Attachment B – Guidelines for Reporting on Business Progress  
and Economic Impacts (2 Pages)

**GOVERNMENT  
EXHIBIT  
2  
07 Cr. 541 (RPP) (ID)**

## GENERAL TERMS AND CONDITIONS ADVANCED TECHNOLOGY PROGRAM (ATP)

August 2001

*This document applies to all Recipients of the ATP Cooperative Agreements. ATP Recipient is defined to include all single company Recipients and each individual company that is identified in the Special Award Conditions as a Joint Venture participant.*

### 1. ORDER OF PRECEDENCE OF TERMS AND CONDITIONS OF AWARD

Where the terms of the award and proposal differ, the terms of the award shall prevail. The Recipient is obligated to bring to the attention of the Grants Specialist any perceived difference between any terms and conditions and the proposal.

### 2. REFERENCED REQUIREMENTS

The ATP Statute, 15 U.S.C. Sec. 278n; the ATP Rule, 15 CFR Part 295; the ATP Notice of Availability of Funds, 66 Fed. Reg. 96 (January 2001); and the ATP Proposal Preparation Kit (November 2000) are hereby incorporated into the award by reference.

### 3. AUTHORITY TO MODIFY

The Grants Officer is the **ONLY** authorized agent at NIST with the authority to bind the Federal Government, and to take actions to amend, suspend, and terminate the cooperative agreement.

### 4. REQUIREMENTS FOR CONTINUING FINANCIAL ASSISTANCE

- a. With respect to any technology arising from assistance provided by NIST under this award, the Recipient shall promote the manufacture of products resulting from that technology within the United States and shall procure parts and materials from competitive United States suppliers to the extent practical.
- b. At any time within the life of this award should the Recipient cease to have a majority control or ownership by individuals who are citizens of the United States, the Recipient shall notify the NIST Grants Officer of that fact, in writing, within FIFTEEN (15) days.
- c. In accordance with 15 U.S.C. 278n Sec. (d) (9) and (e),

NIST may, within thirty (30) days after notice to Congress, suspend a company from continued assistance under this award if NIST determines that the company or a parent company has failed to satisfy any of the criteria contained in paragraphs a. and b. of this term, and that it is in the national interest of the United States to do so.

### 5. NIST PROJECT MANAGEMENT TEAM

The NIST Project Management Team (PMT) includes an ATP Project Manager, a NIST Grants Specialist, and one or more ATP technical and business specialists. The ATP Project Manager is responsible for working with the Recipient, including making recommendations to the NIST Grants Officer throughout the life of the project to ensure that the project progresses towards the objectives stated in the proposal in an optimal way. The ATP Project Manager (and other members of the PMT as appropriate) shall participate in a project start or kickoff meeting, annual reviews, and a close-out meeting prior to the expiration of the award. The ATP Project Manager is responsible for the following:

- a. General oversight and project management functions associated with this cooperative agreement.
- b. Arranging kickoff meetings, annual review meetings, and final closeout meetings.
- c. Monitoring the project to ensure that it is executed in accordance with the proposal and this award; this includes analyzing the quarterly, annual, and final reports, and consulting with other members of the PMT to assess progress.
- d. Recommending appropriate action to the NIST Grants Officer if the project is failing to meet its objectives.

### 6. SUBSTANTIAL INVOLVEMENT

NIST has selected a cooperative agreement as the funding instrument for this project. Accordingly, the NIST Project Management Team will be substantially involved in the following areas:

- a. Approval of go/no go decision points at various project stages before subsequent stages of a project may continue, if specified in the Special Award Conditions;

- b. Concurrence with sole source procurements in excess of \$100,000;
- c. Approval of key personnel specified in the proposal (including such positions as Financial Officer, Administrator, Principal Investigator, and/or Project Manager); and
- d. Approval of changes in Joint Venture membership.

#### 7. TECHNICAL/BUSINESS/FINANCIAL REPORTS AND PLANS

The Recipient shall provide access to information that is required to assess the project's progress throughout the project life cycle. In addition to monitoring the technical work, NIST requires business information pertaining to the project during the life of the project and for six years after its end to assess progress towards commercialization, the degree of adoption of the technology, and the impact of the project on the economy.

##### a. Technical Reporting:

The Recipient shall submit technical performance reports in triplicate (one original and two copies). Two copies shall be submitted to the ATP Project Manager and the original report to the Grants Officer in the same frequency as the Financial Status Report (SF-269). Technical performance reports shall contain information as prescribed in 15 CFR 14.51. (See Attachment A for an optional structure or format for the technical report.)

##### b. Business Reporting:

The Recipient shall submit business reports in accordance with the "Guidelines for Reporting on Business Progress and Economic Impacts" (see Attachment B).

##### c. Financial Reporting:

###### (1) Actual or Incurred Costs

By signing this award the Recipient agrees to ensure that only actual costs incurred will be charged to the award and that all costs will be reasonable, allocable, and allowable in accordance with the applicable Federal Cost Principles. See 15 CFR 14.27. The Recipient shall also ensure that all salaries/wages (technical and administrative), fringe benefits, travel, materials and supplies, equipment, subcontracts, other costs, and indirect costs proposed and to be incurred under this award are consistent with costs incurred for like or similar items on all other Federal and non-Federal projects or cost centers (exclusive of any profits or fees) of the Recipient (including its Joint Venture Partners when applicable).

##### (2) Cost Share

The Joint Venture (JV) Administrator is responsible for conducting a review of the financial status reports for each JV participant to ensure that the financial information is consistent with each participant's approved budget and consistent with Chapter 5, Examination Procedures, item 4. of the NIST Program-Specific Audit Guidelines for Advanced Technology Program Cooperative Agreements with Joint Ventures, dated September 1999. Any discrepancies must be resolved by the JV Administrator prior to submitting financial reports or requesting payments from NIST. The JV Administrator must ensure that the overall award cost-share requirements are met throughout the award. In addition, each JV member is responsible for meeting its cost share in accordance with its approved budget throughout the award.

##### (3) Submission of Financial Reports

For ATP Recipients, Article A.01 of the DoC Financial Assistance Standard Terms and Conditions dated October 1998 is revised as follows:

- (a) The Recipient shall submit a "Financial Status Report" (SF-269) on a calendar quarter basis for the periods ending March 31, June 30, September 30, and December 31, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 days following the end of each reporting period. A final SF-269 shall be submitted within 90 days after the expiration date of the award.
- (b) The Recipient shall submit a "Federal Cash Transactions Report" (SF-272) for each award where funds are advanced to Recipients. The SF-272 is due 15 working days following the end of each calendar quarter for awards under \$1 million dollars; or 15 working days following the end of each month for awards over \$1 million dollars; or unless otherwise specified in a special award condition.
- (c) All financial reports shall be submitted in triplicate (one original and two copies) to the NIST Grants Office.

#### 8. KICK-OFF MEETINGS, ANNUAL REVIEWS, CLOSEOUT MEETINGS, AND SPECIAL STUDIES

The Recipient and each Joint Venture participant, if applicable, shall participate in kick-off, annual review, and closeout meetings. The ATP Project manager will provide the Recipient with meeting instructions in advance of these meetings.

Consistent with the requirements of the Government Performance and Results Act of 1993, Recipients may be asked from time to time to participate in special economic studies or case studies. All requests for participation in such studies will be in accordance with the Paperwork Reduction Act (PRA) requirements as implemented by 5 CFR 1320, and will display a PRA approval number.

## 9. PRIOR APPROVAL REQUIREMENTS

The prior approval requirements in 15 CFR 14.25, paragraph (e) MAY NOT be waived automatically by the Recipient and require written approval from the Grants Officer.

In addition to the requirements specified in 15 CFR 14.25, Recipients shall obtain prior written approval from the NIST Grants Officer for the following changes:

- a. The transfer of funds among direct cost categories must be approved in advance by the Grants Officer if the transfer exceeds 10% of the approved total annual budget for each single Recipient or Joint Venture participant for each approved project year. Recipients are not authorized to create new budget categories without prior approval. The Recipients are not authorized at any time to transfer amounts budgeted for direct costs to the indirect cost line item
- b. Revisions to Ownership and/or Dissolution of Recipient (Recipient includes the single company or any Joint Venture participant) must be approved in advance by the Grants Officer. These changes include but are not limited to the following:
  - (1) In the event that a company is acquired by, or merges with, any other company, including a foreign company, the Recipient shall include in the written notification to the NIST Grants Officer the following information: date of final acquisition or merger; name and address of any new foreign parent and amount of ownership; whether the Recipient intends to complete its assigned tasks with the same commitment and at the same location; and how this change in ownership will affect the project's projected benefits to the United States. The NIST Grants Officer reserves the right to ask for clarification and/or additional information.
  - (2) When the company is no longer majority-owned by U.S. citizens, the Recipient should provide details of the change in ownership and a discussion of whether the change affects the Recipient's assigned tasks in any way.
  - (3) When only two for profit companies are participating in a Joint Venture and one of them ceases participation, the Recipient shall provide

details regarding the circumstances of the departure, and plans for replacing the departing company with another for-profit organization.

- c. Any substitution, addition, or withdrawal of participants to a joint venture must be approved in advance by the Grants Officer. In the event there is a proposed change to the Joint Venture, all newly-proposed Joint Venture participants shall submit the following documents through the Joint Venture Administrator to the Grants Officer for review and approval: CD-511, SF-424B, NIST-1263, CD-346, SF-LLL. New participants must also satisfy the requirements of Article A.05.c of the Department of Commerce (DoC) Financial Assistance Standard Terms and Conditions. The Joint Venture Administrator must provide to the NIST Grants Officer a revised Joint Venture Agreement and documentation of the Recipient's notification to the Department of Justice and the Federal Trade Commission of the changes, additions and/or deletion of participants.

## 10. UNALLOWABLE PROJECT COSTS

Those costs that are designated as being unallowable in Chapter 1, Sections C.4 and C.5 of the November 2000 ATP Proposal Preparation Kit will be unallowable under this award.

## 11. PROGRAM INCOME

- a. Program income earned during the project period shall be retained by the recipient and shall be used to finance any non-Federal share of the project.
- b. Recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.
- c. Costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award
- d. Proceeds from the sale of property shall be handled in accordance with the requirements of Property Standards in 15 CFR 14.30 through 14.37.
- e. Recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award.

## 12. EQUIPMENT

Upon expiration of the project period, the Recipient shall submit to the NIST Grants Officer an inventory of equipment acquired with Federal funds, as prescribed in 15 CFR 14.34, along with an "Equipment Disposition Certification." The

certification provides the Recipient an opportunity to request authorization to continue to utilize the equipment for the purposes of the commercialization initiative. If approved by the NIST Grants Officer, the Recipient shall report to NIST every two years the condition of the equipment as long as the current market value is more than \$5,000.

For Joint Venture awards, title to any equipment purchased under the award, including intangible property that meets the definition of equipment in 15 CFR 14.2(n), that may be in the name of a departing participant, and that is vital to the project, shall be transferred to another Joint Venture participant as instructed by the Joint Venture Administrator for continued use on the project. The Joint Venture shall make compensation to the departing participant for its contribution to the purchase of the equipment by applying its percentage of the cost of the equipment to the current fair market value of the equipment. Should the equipment no longer be needed on the project, the departing participant shall request disposition instructions in accordance with 15 CFR 14.34.

### 13. NON-COMPLIANCE WITH STATUTORY PURPOSE

If NIST determines that the statutory purposes of research and development under 15 USC 278n can no longer be served (e.g., the project is no longer high-risk), the Recipient shall be deemed in material non-compliance with award requirements. As a result, NIST may terminate the award pursuant to 15 CFR 14.61.

### 14. REFUNDS

The Recipient shall promptly submit all refund checks (including interest earned on advances) to the DoC accounting office identified below and notify the Grants Office upon submission. Each check must identify on its face the NIST award number, and no more than a two-word description to identify the reason for the refund. Submit to:

National Institute of Standards and Technology  
Accounts Receivable  
100 Bureau Drive, Stop 3751  
Bldg. 101, Room A820  
Gaithersburg, MD 20899-3751

### 15. AUDITS

Project audits (of Federal and non-Federal funds) are required for all ATP Recipients except when those Recipients are required to comply with the Single Audit Act of 1996 and the audit requirements of Office of Management and Budget (OMB) Circular A-133, "Audits of States, Local Governments and Non-Profit Organizations." Subcontractors/subawardees, including universities, who receive total funding under an ATP project totaling more than \$300,000 each are also subject to the audit requirement. A subcontractor/subawardee is defined as an organization which receives a portion of the financial assistance from the

recipient/awardee and assists the ATP recipient/awardee in meeting the project goals, but does not include the procurement of goods and services.

- a. ALL ATP Recipients, including each Joint Venture participant (if a Joint Venture project), are required to provide sufficient funds as direct costs (unless included as indirect) in the project's multi-year budget to have project audits performed according to the Schedule shown in b. below.
- b. All Recipients shall schedule audits as follows:
  - (1) For awards less than 24 months, an audit is required within 90 days from the project expiration date.
  - (2) For 2-, 3-, or 4-year awards, an audit is required within 90 days after the end of the first year and within 90 days from the project expiration date.
  - (3) For 5-year awards, an audit is required within 90 days after the end of the first year and third year, and within 90 days from the project expiration date.
- c. Audits of all Recipients shall be conducted in accordance with *Government Auditing Standards (GAS)*, issued by the Comptroller General of the United States (the Yellow Book). If an ATP Recipient is required to have an audit performed in accordance with OMB Circular A-133, "Audits of States, Local Government, and Non-Profit Organizations", the annual OMB Circular A-133 audit is deemed to meet the ATP audit requirement. If an ATP Recipient does not have an annual OMB Circular A-133 audit performed, the Recipient should follow the following project audit requirements:
  - (1) Audits for single company Recipients shall be conducted using the *NIST Program-Specific Audit Guidelines for Advanced Technology Program (ATP) Cooperative Agreements with Single Companies*.
  - (2) Audits for joint venture Recipients shall be conducted using the *NIST Program-Specific Audit Guidelines for Advanced Technology Program (ATP) Cooperative Agreements with Joint Ventures*.

The program specific guidelines may be useful in identifying the allowability of specific cost elements and other programmatic compliance requirements for those recipients required to have an OMB Circular A-133 audit.

- d. The Recipient shall submit two (2) copies of each audit report, one to the address shown in Article D.01.c. of the DoC Financial Assistance Standard Terms and Conditions dated October 1998, and one copy to the

NIST Grants Officer.

## 16. CLOSEOUT OF COOPERATIVE AGREEMENT

- a. In accordance with the guidelines established in 15 CFR 14.71 and the DoC Financial Assistance Standard Terms and Conditions dated October 1998, article number A.06, the Grants Officer will allow only those costs associated with compiling the final reports (technical, business, financial, patent/invention, equipment inventory, and closeout audit), during the ninety (90) day closeout period.
- b. The final technical progress (closeout) meeting with the ATP is not considered a closeout-related activity. Therefore, the closeout (end-of-project) meeting with NIST officials must be conducted prior to the expiration date of the award. The Recipient must provide adequate funds in the project budget to ensure participation by all appropriate members in the closeout meeting.

## 17. USE OF NAME OR ENDORSEMENTS

- a. The Recipient and/or its subrecipients or subcontractors shall not, without the prior approval of NIST, use the name of NIST or the Department of Commerce on any product or service which is directly or indirectly related to either this award or any patent license or assignment agreement which relates to this award.
- b. By entering into this award, NIST does not directly or indirectly endorse any product or service provided or to be provided by the Recipient, its successors, assignees, or licensees. The Recipient and its subrecipients and subcontractors, shall not in any way imply that this award is an endorsement of any such product or service.

## 18. PUBLICATION GUIDELINES

In any publications, the Recipient shall acknowledge support of the technology development by NIST. Normally this is done by a footnote reading, "This work was performed under the support of the U.S. Department of Commerce, National Institute of Standards and Technology, Advanced Technology Program, Cooperative Agreement Number 70NANBXHXXXX," or words to that effect.

## 19. PROTECTION OF HUMAN SUBJECTS

Research involving human subjects is not permitted under this award unless expressly authorized by a Special Award Condition or otherwise in writing by the NIST Grants Officer.

The Federal Policy for the Protection of Human Subjects (The Common Rule), codified by the Department of Commerce at 15 CFR Part 27, requires Recipients to maintain

appropriate policies and procedures for the protection of human subjects in research. The Common Rule defines a "human subject" as a living individual about whom an investigator conducting research obtains 1) data through intervention or interaction with the individual, or 2) identifiable private information. The term "research" means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge. The Common Rule also sets forth the categories of research that may be considered exempt from this policy.

In the event it becomes evident that a human subject may be involved in this project, the Recipient shall submit appropriate documentation to the ATP Project Manager for NIST institutional review and approval. This documentation may include the following:

- (1) Documentation establishing review and approval of the project by a qualified Institutional Review Board (IRB). [NOTE: Recipients must provide documentation of continuing IRB approval by the cognizant IRB at appropriate intervals as designated by the IRB, but not less than annually];
- (2) Documentation to support an exemption for the project from The Common Rule [NOTE: This option is not available for activities that fall under 45 CFR Part 46 Subpart B or C];
- (3) Documentation to support a request for a deferral of review for research involving human subjects beginning after year 1 of the project [NOTE: This option is not available for activities that involve the use of human subjects as defined under 45 CFR 46 subpart B, which must be approved before an award can be made];
- (4) Documentation of IRB approval of any modification to an IRB-approved existing protocol or informed consent form must be submitted to the ATP Project Manager for NIST Institutional review and approval.

No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged to the project, until the NIST Grants Officer approves the required appropriate documentation in writing.

## 20. CARE AND USE OF LIVE VERTEBRATE ANIMALS

Research involving live vertebrate animals is not permitted under this award unless expressly authorized by a Special Award Condition or otherwise in writing by the NIST Grants Officer.

The Department of Commerce requires Recipients of financial assistance awards to comply, as applicable, with the Animal Welfare Act as amended, and implementing regulations found at 7 USC 2131-2157, 9 CFR parts 1, 2, and 3.

In the event it becomes evident that live vertebrate animals may be involved in this project, the Recipient shall submit appropriate documentation to the ATP Project Manager for NIST institutional review and approval. This documentation may include the following:

- (1) Documentation of the Recipient's United States Department of Agriculture (USDA) Animal Welfare Act certification, or Animal Welfare assurance from the Office of Laboratory Animal Welfare (OLAW) of the Public Health Service/National Institutes of Health (PHS/NIH), or if only using rodents, birds or fish, and the above USDA or OLAW documents have not been attained, evidence of full accreditation from the Association for the Assessment and Accreditation of Laboratory Animal Care (AAALAC);
- (2) A copy of the Institutional Animal Care and Use Committee (IACUC)-approved Animal Study Protocol (ASP) that includes all signature(s) as required by the organizational IACUC. The Recipient shall provide documentation, in the ASP or a separate certification approved by the IACUC, that the Principal Investigator and other personnel involved in the care and use of the animals are trained and experienced in the procedures to be used in the Protocol in accordance with the National Research Council "Guide for the Care and Use of Laboratory Animals" (NRC Guide);
- (3) A copy of the IACUC approval letter for the approved ASP. [NOTE: Documentation of continuing IACUC review by the cognizant IACUC must be submitted to the ATP Project Manager as it occurs];
- (4) Documentation of IACUC approval of any modification to an IACUC-approved existing protocol must be submitted to the ATP Project Manager for NIST Institutional review and approval.

No work involving live vertebrate animals may be undertaken, conducted, and/or costs incurred and/or charged to the project, until the NIST Grants Officer approves the required appropriate documentation in writing.

## 21. BUREAU OF EXPORT ADMINISTRATION (BXA) CLEARANCE

- a. The Recipient agrees to adhere to the U.S. Export

Administration laws and regulations and shall not export or re-export, directly or indirectly, any technical data created with Government funding under this award to any country for which the United States Government or any agency thereof, at the time of such export or re-export, requires an export license or other Governmental approval without first obtaining such licenses or approval and the written clearance of the NIST Grants Officer.

- b. The Bureau of Export Administration (BXA) shall conduct an annual review for any relevant information about the Recipient's compliance with U.S. export laws. NIST reserves the right to take appropriate action in accordance with 15 CFR 14.62 and Article L.01 of the Department of Commerce Financial Assistance Standard Terms and Conditions, if the BXA reports significant adverse information about the Recipient to the NIST Grants Officer.

## 22. NORTH AMERICAN FREE TRADE AGREEMENT PATENT NOTIFICATION PROCEDURES

Pursuant to Executive Order 12889, the DoC is required to notify the owner of any valid patent covering technology whenever the DoC or its financial assistance Recipient, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the Recipient uses or has used patented technology under this award without a license or permission from the owner, the Recipient must notify the DoC Patent Counsel at the following address, with a copy to the NIST Grants Officer:

Department of Commerce  
Office of Chief Counsel for Technology  
Patent Counsel  
14th Street and Constitution Avenue, NW  
Room H-4610  
Washington, DC 20230

The notification shall include the following information:

- a. The award number
- b. The name of the DoC awarding agency
- c. A copy of the patent
- d. A description of how the patented technology was used
- e. The name of the Recipient contact, including an address and telephone number

## 23. LIABILITY

### a. Property

The U.S. Government shall not be responsible for damage to or resulting from any property provided to the Recipient,

and/or its subrecipients and/or subcontractors, and/or acquired by the Recipient, and/or its subrecipients and/or subcontractors, pursuant to this award.

b. No Warranty

NIST makes no express or implied warranty as to any matter whatsoever, including the conditions of the research or any invention or product, whether tangible or intangible, made, or developed under this award, or the ownership, merchantability, or fitness for a particular purpose of the research or any invention or product made or developed under this award.

c. Disclaimer

- (1) The United States expressly disclaims any and all responsibility to the Recipients or third persons for the actions of the Recipient or third persons resulting in death, bodily injury, property damage, or any other losses resulting in any way from the performance of this award or any subaward or subcontract under this award.
- (2) The acceptance of this award by the Recipient does not in any way constitute an agency relationship between the United States and the Recipient.

d. Indemnification

- (1) The Recipient, and/or its subrecipients and/or subcontractors, agree to indemnify and hold harmless the U.S. Government for all liabilities, demands, damages, expenses and losses arising out of the use by the Recipient, its subrecipients, subcontractors, and/or any party acting on their behalf or under their authorization, of products made by the use of technical developments arising under this agreement. This provision shall survive termination of this award.
- (2) The Recipient, and/or its subrecipients and/or subcontractors, agree to indemnify and hold harmless the U.S. Government for any loss, claim, damage, or liability of any kind involving the Recipient's, subrecipient's, and/or subcontractor's employees arising in connection with this award.

e. Force Majeure

Neither party shall be liable for any unforeseeable event beyond its reasonable control not caused by the fault or negligence of such party, which causes such party to be unable to perform its obligations under this award (and which it has been unable to overcome by the exercise of due diligence), including, but not limited to: flood, drought, earthquake, storm, fire, pestilence, lightning and other natural

catastrophes, epidemic, war, riot, civil disturbance or disobedience, strikes, labor dispute, or failure, threat of failure, or sabotage of the Recipient or subcontractor facilities, or any order or injunction made by a court or public agency. In the event of the occurrence of such a *force majeure* event, the party unable to perform shall promptly notify the other party. It shall further use its best efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the *force majeure* event.

24. INFORMAL COLLABORATORS

All informal collaborators in ATP awards are subject to ATP intellectual property regulations as specified in 15 CFR 295.8. Informal collaborator means any individual or organization which consults, cooperates with, or participates in the performance of this award, and is not included in the approved award budget.

25. INTELLECTUAL PROPERTY

a. Rights in Data

- (1) The Government shall have certain rights to use data first produced in the performance of the award, whether or not the data is copyrighted. The Recipient may establish claim to copyright subsisting in any data first produced in the performance of the award. When claim is made to copyright, the Recipient shall affix the applicable copyright notice of 17 U.S.C. Sec. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government, are published, or are deposited for registration as a published work in the U.S. Copyright Office. The Recipient shall grant to the Government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, perform and display publicly, and for data other than computer software to distribute to the public by or on behalf of the Government.
- (2) The licenses granted to the Government under this Term shall not be considered as a waiver of the nondisclosure requirements of 15 U.S.C. Section 278n(d)6: "Intellectual property owned or developed by any business receiving funding may not be disclosed by any officer or employee of the Federal Government except in accordance with a written agreement between the owner or developer and the Program."

b. Patent Rights

(1) Definitions



- (a) "Company" means a for-profit organization, including sole proprietors, partnerships, or corporations.
- (b) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.
- (c) "Made" means, when used in relation to any Invention, the conception or first actual reduction to practice of such invention.
- (d) "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a process or method, or to operate in the case of a machine or system; and in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.
- (e) "Subject Invention" means any invention of the Recipient conceived or first actually reduced to practice in the performance of work under this award.

## (2) Ownership of Inventions

Pursuant to the statute that establishes the ATP (15 U.S.C. 278n(d)(11)), this paragraph takes precedence over 15 CFR 14.36 and DoC Financial Assistance Standard Terms and Conditions, dated October 1998, article C.02. The Recipient or, if appropriate, its subrecipients, contractor(s) and/or subcontractor(s), shall have the entire right, title, and interest throughout the world to each Subject Invention according to the provisions of this clause, provided that this party is a company or companies organized in the United States. Joint ventures shall provide to NIST a copy of their written agreement which defines the disposition of ownership rights among the members of the joint venture, and their contractor and/or subcontractors, as appropriate, in accordance with the second sentence of this paragraph. However, the United States hereby reserves a nonexclusive, nontransferable, irrevocable paid-up license to have practiced for, or on behalf of, the United States, any such invention. Title to any such invention shall not be transferred or passed, except to a company organized in the United States, until the expiration of the first patent obtained in connection with such invention.

## (3) Invention Disclosure, United States License and Filing of Patent Application by Recipient

- (a) The Recipient shall disclose each subject invention to NIST within two months after the inventor

discloses it in writing to Recipient personnel responsible for patent matters. The disclosure to NIST shall be in the form of a written report and shall identify the award under which the invention was made and the inventor(s). It shall, at a minimum, contain the following information:

- the title of the invention;
- the names of all inventors;
- the name and address of the assignee (if any);
- an acknowledgement that the United States has rights in the subject invention (i.e., the Governmental Use License);
- the filing date of the present invention;
- an abstract of the disclosure;
- a description or summary of the present invention;
- the background of the present invention or the prior art;
- a description of the preferred embodiments
- what matter is claimed

One original and two copies of all patent reports shall be submitted to:

NIST  
Grants and Agreements Management Division  
100 Bureau Drive, MAIL STOP 3580  
Building 411, Room A143  
Marked FOR: Agreement Number \_\_\_\_\_  
Gaithersburg, MD 20899-3580

Each report shall also include the use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to NIST, the Recipient will promptly notify NIST of acceptance of any manuscript describing the invention for publication or of any sale or public use planned by the Recipient.

- (b) The Recipient shall notify NIST within two years of disclosure to NIST whether or not the Recipient intends to file a patent application on any subject invention.

If a patent is issued, the Recipient(s) must submit the following to the Grants Office:

- The award number under which the invention was made;
- The serial number of the patent issued;
- The date of issuance;
- A copy of the disclosure as issued (including the drawings) and;

- The name(s), address, and telephone number(s) of an assignee.

In a JV award, the administrator must submit the patent information to NIST for all participants. In order to prevent disclosure of information to the general public under the Freedom of Information Act (FOIA) or any other statute, each page of each patent report should be marked, "CONFIDENTIAL/PROPRIETARY."

- Requests for extension of the time for disclosure, election, and filing under paragraphs 24.b.(3)(a) and (b) of this Term may be permitted at the discretion of NIST.

(4) Recipient Action to Protect the Government's Interest

- The Recipient agrees to execute or to have executed and promptly deliver to NIST all instruments necessary to establish or confirm the rights the United States Government has throughout the world in those subject inventions to which the Recipient has filed a patent application in which the United States has reserved a non-exclusive license.
- The Recipient shall require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Recipient, each subject invention made under the award in order that the Recipient can comply with the disclosure provisions of paragraph b.3. of this Term, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by b.3.(a) of this Term. The Recipient shall instruct such employees through employee agreements or other suitable education programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to United States or foreign statutory bars.
- The Recipient shall promptly notify NIST of any decisions not to continue the prosecution of a patent application, the payment of maintenance fees, or the defense in a reexamination or opposition proceeding on a patent in any country.
- The Recipient agrees to include, within the specification of any United States patent application and any patent issuing thereon covering

a subject invention, the following statements:

*This invention was made with United States Government support under (identify the cooperative agreement number) awarded by the National Institute of Standards and Technology (NIST).*

*The United States Government has certain rights in the invention.*

(5) Subawards and Subcontracts

The Recipient shall include in all subawards and subcontracts, regardless of tier, for experimental, developmental, or research work, a patent rights clause, as appropriately modified, comparable to this term. However, pursuant to the statute establishing the ATP (15 U.S.C. 278n(d)(11)), if the subrecipient or subcontractor is not a company organized in the United States, the patent rights clause shall provide that title to each subject invention made by the subrecipient or subcontractor shall vest with a company or companies incorporated in the United States.

(6) Reporting on Utilization of Subject Inventions

The Recipient agrees to submit on request, no more frequently than annually, periodic reports on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Recipient or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Recipient, and such other data and information as NIST may reasonably specify. The Recipient also agrees to provide additional reports as may be requested by NIST in connection with any march-in proceeding undertaken by NIST in accordance with paragraph b.8. of this Term. Such information shall be treated by NIST as commercial and financial information and thus as privileged and confidential and not subject to disclosure under section 552 of Title 5 of the United States Code.

(7) Preference for United States Industry

Notwithstanding any other provision of this Term, the Recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such person agrees that any products embodying the inventions will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by NIST upon a showing by the Recipient or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that, under the circumstances, domestic manufacture is not commercially feasible.

(8) March-in Rights

The Recipient agrees that, with respect to any subject invention in which it has acquired title, NIST has the right, in accordance with procedures in 37 CFR 401.6 and any supplemental regulations of NIST, to require the Recipient, an assignee, or an exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances. If the Recipient, assignee, or exclusive licensee refuses such a request, NIST has the right to grant such a license itself if NIST determines that:

- (a) Such action is necessary because the Recipient or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;
- (b) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Recipient, assignee, or licensees;
- (c) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Recipient, assignee, or licensees; or
- (d) Such action is necessary because the agreement required by paragraph b.7. of this Term has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of the agreement required by paragraph b.7 of this Term.

ATTACHMENT A  
AUGUST 2001

NIST ADVANCED TECHNOLOGY PROGRAM

OPTIONAL GUIDELINES FOR QUARTERLY R&D PERFORMANCE REPORTS

OVERVIEW

The Advanced Technology Program (ATP) General Terms and Conditions incorporated into the Cooperative Agreement between your organization(s) and the ATP calls for quarterly R&D performance reports that are the main source of information provided to the ATP. The content of these reports, as requested by ATP, is consistent with 15 CFR §14.51 ♦. A suggested structure is outlined below and is designed to not be overly burdensome to your organization. This specific structure or format is optional, but the content is required. If your organization has its own format for such reports and all the requested information is provided, ATP will accept your format.

ATP relies on these quarterly R&D performance reports to monitor technical developments in projects. In addition, these reports are used in preparing quick-response derivative reports to Congress and Executive Agencies of the Government that oversee ATP. ATP policy prohibits release of proprietary information contained in these reports and limits internal distribution to those directly involved in management and administration of the specific cooperative agreement. ATP will clear information abstracted from the reports by ATP through your organization in advance of release. The report format outlined here provides for a systematic and logical structuring of key progress elements, and promotes tracking of developments. **For each performance year, a core report is initially established, and subsequent reports simply update this core.** Besides keeping the ATP Project Manager up to date on progress, these reports will provide a history of the project over its life.

CONTENT

The quarterly R&D performance report should:

- a) Identify project objectives, the initial "baseline" for tracking project developments, and milestones through the end of the current performance year;
- b) Provide evidence that projects are attaining technical milestones necessary to meet the objectives of the original proposal;

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♦ 15 CFR Part 14 can be found directly at <http://www.doc.gov/oebam/cfr14.htm>

- c) Identify and explain changes in the composition, direction, or key personnel associated with the project;
- d) Identify problems or special opportunities that are critical to the progress of the research, and areas which may benefit from consultation with specialists at NIST.

Two copies of each quarterly R&D performance report shall be submitted to the ATP Project Manager, and the original report to the Grants Officer. If there are technical graphics that do not copy well, please include originals in the copies of the report. Please refer to Special Award Conditions for mailing addresses.

In the following sections, each element of the quarterly R&D performance report is discussed. If you wish to submit a more extensive report of technical progress for a given quarter, you may append it to the formal report. If there is no additional progress to report under a given heading, a statement to that effect should be included for the performance period. Please date all additions and mark each page of the report "Proprietary."

#### **PROJECT OBJECTIVES**

The first section of the first quarterly R&D performance report should state the overall technical goal of the project and list specific objectives. These should be drawn from the proposal with amplification as required to provide quantitative bases for success, or additional detail. The objectives should remain unchanged throughout the project unless results dictate a shift or major technical problems require re-planning a portion of the work. Changes should be addressed in the section entitled "Summary of Project Changes." If the project objectives are unchanged, they may be put in an appendix to the report.

#### **PROJECT BASELINE**

In order to contrast the state of the art before and after completion of each ATP project, establish a baseline to describe the status of key elements of the technology at the project outset. Define the baseline in the context of specific targets that are expected to constitute success, and are consistent with project objectives. These may include initial per-unit-costs, physical performance characteristics, or specific technical capabilities. If quantitative measures are not applicable, provide qualitative statements describing the state of the art at the time of project initiation. Identify any changes since the proposal was prepared. The ATP Project Manager will assist you in identifying appropriate baseline characterization as part of the project kickoff. Once established, the project baseline may be moved to an appendix to the report.

#### **TECHNICAL MILESTONES**

The quarterly reports should present appropriate milestones through the current performance year and relate the contribution of current year milestones to the overall project milestones. Current year milestones are generally presented and/or modified during the kickoff meeting, and subsequently